

CIRCLE PEACEMAKING IN KAKE, ALASKA: A CASE STUDY OF
INDIGENOUS PLANNING AND DISPUTE SYSTEMS DESIGN

By

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Abstract

Peacemaking is both a way of life and a process to address wrongdoing in the community. The process, Circle Peacemaking is a restorative practice designed by the community members in Kake, Alaska, a Tlingit community located in the southeast part of the state. Based on local values, ancient laws and traditional knowledge, Circle Peacemaking has been effective in lowering the recidivism rate for wrongdoers in the community and pays close attention to the needs of the victims. This study adds to the growing field of Indigenous Dispute Systems Design derived from the principles and steps used in the practice of Indigenous Planning (IP) and Dispute Systems Design (DSD). DSD is a discipline practiced by attorneys and mediators when designing dispute resolution systems, such as mediation and arbitration, within organizations and communities. Despite hidden pressures and open challenges, the local design of Circle Peacemaking, both as a way of life and process, ensure that local design for bringing balance back into a community can succeed and sustain itself long-term. This study explores the resurgence of traditional knowledge and practice as a foundation for community wellness in Kake. This case study is a tribute to the people of Kake and Yukon Territory, Canada for their hard work, perseverance and dedication to the well-being of their communities. This study is a contribution of their work that they will pass down to the following generations of Peacemakers.

Table of Contents

	Page
Title Page.....	i
Abstract	iii
Table of Contents.....	iv
List of Figures.....	ix
List of Tables.....	x
List of Appendices	xi
Preface.....	xii
Acknowledgments	xiv
Chapter 1: Introduction to Circle Peacemaking in Kake, Alaska.....	1
My Personal Introduction.....	2
Significance of Study to the Researcher	3
Introduction to Kake – A Tlingit Community	4
Design of Circle Peacemaking in Kake.....	5
Research Question.....	8
Purpose of this Study	9
Problem Statement.....	9
Pierre Bourdieu – The Juridical Field in Alaska.....	10
Anglo-American and Indigenous knowledge fields.....	12

Indigenous planning in peacemaking.....	13
Dispute systems design.....	14
Significance of Research to Designers of Peacemaking Circles in Rural Alaska	14
Significance to the Literature on Indigenous Planning and Dispute Systems Design	15
Methods and Design for Gathering Information.....	15
Conclusion	16
Chapter 2: Literature Review	17
Introduction	17
History of Federal Government’s Relationship to Tribes	18
State of Alaska’s Relationship to the Tribal Governments in Alaska.....	20
Peacemaking is a Way of Life.....	25
The Design of Circle Peacemaking Process in Kake.....	26
Indigenous Planning (IP).....	28
Dispute Systems Design (DSD).....	31
Steps and practices of Dispute Systems Design.	34
Pierre Bourdieu – Field Theory	38
The culture within the juridical field – Habitus.....	40
The rules of the game – Doxa	42
Fields of practice	43
Social, cultural, and symbolic capital.....	44

DiMaggio and Powell – Isomorphism in the Field.....	45
Coercive process – who is making the rules?	46
Mimetic processes – organizations looking and acting alike.	46
Normative processes – pressures to conform to a larger organization.....	47
Safety Zone Theory (SZT)	48
Conclusion	48
Chapter 3: Methods.....	50
Introduction	50
Indigenous Research Methodology.....	50
Indigenous Paradigms in Research	52
Indigenous Epistemology	53
Sources and Methods of Data Collection.....	54
Data Collection– Interviews in Kake and Yukon Territory, Canada.....	56
Interview Methodology	57
Qualitative Methodology.....	57
Analysis Strategy – Goals and Objectives	58
Researcher’s Use of the Results.....	58
Conclusion	59
Chapter 4: Results.....	60
Introduction	60

The State of The Judiciary Reports: 1972-2016 (44 years).....	61
Support for Therapeutic Courts	72
Support for Restorative Justice	73
Alaska Rules of Court Themes Supporting Local Rural-Based Design	75
Results from Interviews in Yukon Territory, Canada and Kake, Alaska.....	79
Elders as Leaders	84
Former Wrongdoers as Leaders.....	85
Supporters of the Circle.....	86
Ku.wéex' is a Memorial Potlatch Ceremony and Maintaining Relationships	90
After exploring the elements of design of the Circle Peacemaking process in Kake, there were seven principles and practices that were important to the people who were interviewed. These were the foundations of design that created a strong Circle in the community.....	90
Seven Principles and Practices of Circle Peacemaking in Kake	91
My observations - Kake as a Community of Care.....	96
Conclusion	97
Chapter 5: Discussion Chapter	99
Introduction	99
The Juridical Field: The Culture of Power, Prestige and Money	99
Chief Justice Reports Reflect a Changing System.....	102
Decade of Top-Down Design in Rural Alaska, 1972-1982	104

Village Conciliation Boards in Rural Alaska, an Attempt at Top-Down Design.....	105
Safety-Zone Theory and State of Alaska Court System’s Design.....	106
One Size Does Not Fit All: Restorative Justice.....	108
Sameness in Western Design: Federal State and Tribal Courts	110
Insiders as Designers: Return of Local Responsibility	112
Peacemakers are Volunteers Working Towards Community Wellness	113
Indigenous Dispute Systems Design in Rural Alaska - 8 steps.....	114
1. Hold Community Meetings.....	115
2. Define the Conflicts in Your Community.	117
3. Envision a Safer and Healthier Community.	118
4. Peacemaking is a Way of Life.	119
5. Prepare for Resistance and Constraints in Local Design.....	120
6. Create Capacity for Peacemaking.	120
7. Place-based Leadership in Peacemaking Design.	121
8. Create close relationships with judges, lawyers, social workers, probation officers.....	123
Revisiting the Efforts of the Upper Tanana Wellness Committee in Tok, Alaska.....	123
Recommendations.....	129
Conclusion.....	130
References	131

List of Figures

	Page
Figure 1. Map of the Road System in Alaska.....	19
Figure 2. Map of 12 Native Corporations in Alaska.....	22
Figure 3. Maps of Reservations and One Reservation in Alaska	24
Figure 4. Indigenous Planning Timeline, Matunga, 2013.....	29
Figure 5. Interest, Rights and Power Based Processes	33
Figure 6. Results From Four Sources.....	60
Figure 7. List of Semi-Structured Interview Questions Used by Researcher	79
Figure 8. Peacemaking as Both a Way of Life and as a Process.....	80
Figure 9. Seven Principles and practices of Circle Peacemaking Design in Kake.....	91
Figure 10. Actors Within the Juridical Field.....	100
Figure 11. Magnetic influence in the Juridical Field.	102
Figure 12. Recommendation Chart required for criminal cases under Rule 11(i)	108
Figure 13. State, Federal, Tribal Court and Circle Peacemaking Process in Alaska.....	110
Figure 14. Sameness of Process: Tribal and State Courts Processes.....	111

List of Tables

	Page
Table 1. Profile of Interviewees.....	56
Table 2. Decentralized and Centralized Terminology	62
Table 3. State of the Judiciary Annual Reports that Contain Chief Justice Support for Local Design of Peacemaking in Rural Alaska, ADR, TJ and RJ, and Collaboration of Services.....	63
Table 4. Alaska Rules of Court That Allow for Referrals to a Community-Based Restorative Justice Program or Transfer to Another Court.	75
Table 5. Emergent Groups and Themes.....	81

List of Appendices

	Page
Appendix A	138
Appendix B.....	139
Appendix C.....	142

Preface

Chapter 1 is the introduction to the case study, a community-based design of Circle Peacemaking in a Tlingit community in Alaska. In this chapter, I introduce myself and why this research is significant to me. I introduce the community of Kake (pronounced “Cake”) where I conducted most of my interviews. I state my research question, the problem statement, the theories used as a framework for this study, the Indigenous paradigms that I use in my research, the Anglo-American and Indigenous fields of knowledge and practice within the governing field, and the principles of Indigenous Planning and Dispute Systems Design (DSD). I state the significance of this research to designers in rural Alaska, and that this research adds to the literature in Indigenous Planning and DSD. Finally, I introduce the sources and methods of data collection and my interview methodology.

Chapter 2 is the Literature Review. It covers literature on the federal government’s historical relationship to the tribes in Alaska, the State of Alaska’s relationship to the tribes in Alaska, the Peacemaking design in Kake, and the principles of Indigenous Planning and Dispute Systems Design. It also covers the literature on theory related to Pierre Bourdieu’s field theory, Dimaggio and Powell, and Safety Zone Theory.

Chapter 3 is the Methods Chapter. This chapter covers methods used by Indigenous researchers that include Indigenous paradigms in research, Indigenous epistemology, sources and methods of data collection, the methodology in the interviews conducted, and the analysis strategy.

Chapter 4 is the Results Chapter. It covers a 43-year span of the “State of the Judiciary Reports to the Alaska Legislature” that reveal the Chief Justice’s support for rural dispute resolution design, therapeutic courts, and Restorative Justice. In addition, this chapter covers

recent Rules of Courts support for local rural-based design. Also, this chapter covers the results from the interviews with Peacemakers and designers in both Canada and Kake that reveal Peacemaking as both a way of life and a process. Finally, I add my own observations of activities in Kake that show a community of care.

Chapter 5 is the Discussion Chapter. I discuss how my research relates to Bourdieu's theory of the juridical field in the Chief Justice reports of a changing justice field, top-down design by outsiders in rural Alaska, the Safety-Zone theory, and Dimaggio and Powell's sameness in organizational development theory. I use this section to comment on insiders as designers of Peacemaking and the eight steps of Indigenous Dispute Systems Design. I conclude by analyzing the Upper Tanana Wellness Committee's efforts at designing a Restorative Justice initiative in Tok, using the steps and principles of Indigenous Dispute Systems Design.

Acknowledgments

Before I begin, I offer respect and honor to the Native people of this land Troth Yeddha' upon which this university is built a century ago. This was once their gathering place. May this land continue to be a place of education for many generations. I am grateful to so many people for being on board with me throughout this journey.

First, I dedicate this dissertation to the ones who are with me in spirit and memory– my dearest friend Mike Shakuni Smith, Regional Chief of Yukon Territory, Canada. You guide me with your wisdom, and keen ability to focus; my eldest son, Timothy Dohan, who is my creative inspiration; my younger sister Patti Hyslop, whose courage and vision lives on through the many people her life touched. I will always cherish the memories.

I am deeply grateful to all the members of my family and all my friends for their patience and support during this long and often lonely process. My youngest son Ben shared many holidays with a working mother. I give special thanks to Annie's granddaughters Zoey, Deion, Brooklyn, Brenna, Macy, Kenna, and grandson Dezmond, who offer me the joy of being part of their growing up years. They were welcome breaks from my research and writing.

I honor my hard-working father Floyd Hyslop who comes from Scottish people and my mother Polly Hyslop who had six children at the time of no running water and electricity in our village. We grew up with all the elements necessary for childhood – lots of wide open space, and dirt.

I could not have started this research journey without the teachings of my elders from the Upper Tanana region who kept me grounded; my grandmother Bertha Demit-Sinyon who would not speak the English language to me; late aunties Ellen Demit and Laura Sanford who taught me our strong values through stories; clan aunties Ada Gallen and Bessie John who grew up on the

land; clan auntie Sherrie Barnes who is fearless; and beloved language teacher Avis Sam. She and I spent many hours in the woods where she taught me to listen and observe. Her husband Roy taught me clan kinship and how to work on moose skin. May I always remember the teachings.

In addition, I cannot begin to express the depth of my gratitude to the Tlingit peacemakers and supporters of peacemaking of Yukon Territory, Canada and Kake, Alaska who welcomed me into their homes and shared their stories.

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T'oodjht'ay Tsen-‘ij T’axoh

Chapter 1: Introduction to Circle Peacemaking in Kake, Alaska

This research is a case study that focuses on the elements of community-based design of Circle Peacemaking, a restorative practice in a predominantly Tlingit community in Alaska. The Peacemaking process (which I will refer to intermittently as “the Circle”) works in partnership with the State of Alaska judicial system for misdemeanors and juvenile offenses. In addition, referrals come to the Circle from the local school, law enforcement office, health clinic, and local families, who seek advice from the Circle regarding personal family issues. The values and practices of ancient law are important in the design of Peacemaking, focusing attention on local wrongdoers and victims in the community. With each new referral, participants in the Circle seek to address the underlying issues that lead to crime and conflict, and focus on the repairing of relationships and preventing further disputes. Their intention is to “have offenders recognize the harm they have caused their victims, help heal relationships, and help victims heal and free themselves from blame and the effects of trauma” (In Recognition, 2013, p. 121). The community accepts Circle Peacemaking as a legitimate method of conflict resolution and crime reduction. The process has been effective in lowering the recidivism rate for wrongdoers in their community, while paying close attention to the needs of the victims (who are often left out in the criminal justice system). Over the years, the Peacemakers within the Circle process have guided adults and juvenile offenders with high success rates (Kake Circle Peacemaking, 2003). In the first four years after they began their practice, the Circle members served 140 members with 97% completion of the agreements. The process is effective in bringing local Tlingit culture and values to the Circle. Moreover, Circle Peacemaking is a part of the community’s work towards building community wellness. Other programs such as the Keex Kwaan culture camp in the summer brings the community members together to focus on language and culture. The

community's once-high suicide rate in the 1980s has now dropped to zero. In 2003, the Kake received an Innovations for American Government award from Harvard for their community designed efforts. "The program's mission is to recognize, promote, and disseminate innovative programs, policies, and practices so that they can become widely adopted and established as best practices" (Harvard Kennedy School, 2018).

"These are remarkable and desperately needed achievements in Alaska" (Kake Circle Peacemaking, 2003). This is no easy feat, and one that deserves recognition. However, this change towards community wellness did not happen overnight. In fact, it took years of strong and robust leadership to change the tide of destruction and despair. Instead of ignoring their overwhelming problems, the community members began to work together despite resistance and, seemingly, lack of solutions.

My Personal Introduction

I am Upper Tanana Athabascan Dineh from Northway, Alaska, a village located in the Upper Tanana River region of Alaska. I come from a matrilineal clan and am a member of the Neesüü clan from Canada. My father, Floyd Hyslop was born in Roscommon, Michigan and is of Scottish ancestry. My paternal grandparents are Tom and Elizabeth Hyslop. My mother is Polly (Demit) Hyslop. She was born in the Upper Tanana region. My maternal grandmother is Bertha (Johnny) Demit-Sinyon from the Scottie Creek region of Canada and Alaska, and my grandfather is Elijah Demit, from Kechumstock region located near the village of Tanacross. He is from the Altsatdineh clan. My maternal great-grandmother Annie Johnny is from the Canada/Alaska region. I spent my early years in the Dineh villages of Northway, Tanana, and Galena and graduated from a Christian boarding school outside my village. I grew up during a very chaotic period of time of alcohol and destruction for Alaska Natives in the villages of rural

Alaska. Times have changed, as our rural communities are regaining balance after an era of tumultuous change.

Significance of Study to the Researcher

My interest in Kake's community-based design of their restorative practice began when I volunteered to join a monthly discussion group in Tok, a predominately non-Native community of about 1,258 residents (Census Viewer, 2010) located 56 miles from my home village of Northway. Together with a team of mostly local professionals, we formed the Upper Tanana Wellness Committee to address underage drinking in the surrounding Native communities and we met at the Tok Courthouse. The committee included the local Tok magistrate-judge (and later his replacement), local law enforcement, educators, school administrators, mental health counselors, administrators from the non-profit Native organization, and tribal administrators from nearby villages. The faculty members from the Department of Justice at the University of Alaska (UAF) participated via teleconference. Also, an invited member of the Hartford Court in Hartford, Connecticut participated by phone out of interest because they had designed a problem-solving court - the Hartford Community Court. We met once a month at the Tok Courthouse to share ideas for reducing the high incidences of underage drinking in a nearby Native village. We also used that one hour a month to share our vision for our communities. At one monthly meeting, a committee member introduced us to the term "Restorative Justice". It was the first time many of us ever heard that term, and we had no clue what it meant. At that time, the UAF Department of Justice was offering a workshop taught by a restorative justice practitioner who worked for The Restorative Community Conference Program located in Whitehorse, Yukon Territory. It is a program created under the Youth Criminal Justice Act that works with youth who have been charged with an offense. This Restorative Justice training was

a pivotal point for me. I was convinced that Restorative Justice was a useful and kinder approach when working with young wrongdoers, and it involved family members and supporters. If it worked in Canada with great promise, then I thought it could work for the young offenders in the Upper Tanana villages and the community of Tok. I brought this knowledge back to the committee and we all agreed that this was the path we were going to take in addressing the underage drinking in local communities. Our committee applied for and received state funding to design a Restorative Justice program for the Upper Tanana region. Our short-lived program came to be known as the “Wellness Court” to the locals, though it was not a court at all, designed as a Circle using Restorative Justice principles and practices. The Upper Tanana Wellness Committee made a valiant effort in the design of a Restorative Justice initiative, but despite meeting as a team for over three years, and working together through many challenges and obstacles, our efforts were not sustainable. This study is a personal journey and reflection of our efforts to create a sustainable restorative system in the Upper Tanana region.

Introduction to Kake – A Tlingit Community

Kake is a beachfront community with approximately 557 residents who are predominantly Tlingit (U.S. Census Bureau, 2013), located on Kupreanof Island, 95 air miles southwest of Juneau, the capital city of Alaska. Accessible only by air or boat, Kake has a K-12 school, health clinic, village police safety officer, state courthouse (at the time the study began), Tribal Corporation office, city office, two stores, community hall, cannery, and an elder residence. In the summer months, the state ferry brings tourists to the island. Like many small Native communities in rural Alaska, Kake has a federally recognized tribal government; the Organized Village of Kake (otherwise referred to as OVK) serves the social, economic,

educational, and tribal court needs of the tribal members. In addition, Kake is a first-class city (City of Kake, 2018).

Design of Circle Peacemaking in Kake

“We have to do this ourselves” (Jackson, 2010, p. 6).

After a major Alaskan newspaper spotlighted their community problems in 1988, Kake residents took action. The town had one of the highest rates of suicide in the nation in the 1980s (Jackson, 2010, p. 6). There were 18 cases of suicide between 1980-1999 on record (Health Analytics and Vital Records, 2018). Outsiders to the community and enormous cash flow from the logging industry replaced seasonal jobs. As a result, many adults and youth resorted to drinking and substance abuse. An absent justice system offered a juvenile probation officer who only flew to the village when there was a serious offense (Kake Circle Peacemaking, 2003).

“The 1980s was a horrendous decade,” (Fulton, n.d.). In the late 1980s, when Kake residents begin meeting together to discuss the social problems in their community, alcoholism and suicide rates were staggering. “At one time, there were 21 people that died in one year from suicides. One hundred percent of it was because of alcohol. I doubt if they would have done that to themselves if they were sober,” states Mike Jackson, the former state magistrate and current Keeper-of-the-Circle for the Circle Peacemaking (2010, p. 2). The Keeper-of-the-Circle serves as the contact person in a referral and the facilitator of the circle and follow-up circles. They are also helping “to guide the wrongdoer in the right way” (Jackson, 2017).

The award-winning newspaper series published by the Anchorage Daily news, called “A People in Peril”, portrayed Alaska Native suicide and alcoholism in Alaska as an “epidemic” (Weaver, 1988, p. A2). It portrayed the sober members of Kake as those who looked “the other way” and did not reach out to help (McCoy, 1988, p. G1) the “all too-frequent scenes of

destruction” (p. G4). “And this made us look right in the mirror” said Mike Jackson (2010).

Besides the newspaper article, it took the threat of a suicide pact by local teens to shake Kake residents to action and to meet as a community to talk about their problems. That was the first of several community meetings addressing the issues in their community. However, the local change-agents met resistance from several community members:

There was a long debate about what was right and what was wrong and what was religion, what was tradition, and the common values of love, respect and forgiveness. That sent us on the road of recovery and healing (Jackson, 2010, p. 6).

The original designers of Circle Peacemaking in Kake invited outside consultants for assistance in their quest for answers to the serious social problems they faced on a daily basis. While the consultants could offer support and their experience, the community members were left with the problems. When Kake members realized that the responsibility for change was on their shoulders, they began to work together to find solutions. One member heard of a First Nations* community called Alkali Lake located in British Columbia, Canada that was one immersed in alcohol, yet the community had become a positive example of sobriety. He personally paid for the Alkali Lake trainers to offer a workshop called “New Directions” for the residents of Kake. The workshop helped the participants “express their emotions and confront rather than avoid” (McCoy, p. G3) their problems. Community meetings served as a public forum for residents who wanted to be involved in creating a climate of change.

Three years later, Jackson met Harold Gatensby, a Tlingit Peacemaker practitioner, at a Restorative Justice Training. Gatensby shared his work reviving Peacemaking, a Tlingit traditional practice in his community of Carcross, Yukon. Carcross is a First Nation reservation

* First Nations is a term used to describe Aboriginal peoples in Canada who are not Métis or Inuit. Section 35 of the Constitution Act of 1982 declares that Aboriginal peoples in Canada include Indian (First Nations), Inuit and Métis peoples. Jun 10, 2015 First Nations - The Canadian Encyclopedia www.thecanadianencyclopedia.ca/en/article/first-nations/

in Yukon Territory of Canada not far from Kake. Jackson recognized this practice as something he learned as a youth it from his father and grandfather, both Peacemakers.

To further their education of the Peacemaking process, the Organized Village of Kake (OVK) invited Harold Gatensby and other Peacemaking practitioners to Kake to hold a Peacemaking training. A week after the training, the members of Kake held their first Circle. This Circle involved an adult woman who had her children removed from her by the State for her inability to stop drinking alcohol. She had failed several trips to treatment centers. The woman attended the Circle to plan a life without alcohol with the support and suggestions of the Peacemakers. While she attended treatment, the members of the community maintained her bills, family, and home. She returned to her community sober and regained custody of her children (Jackson, 2010). She remains sober to this day. Circle Peacemaking has received national attention and acclaim for its accomplishments. This initiative has withstood internal pressures as it evolved to become a process serving the local people. The community-designed initiative is a phenomenon because of its viability and working relationship with a largely centralized legal system in Alaska. Because there is an increase in Alaskan tribes opting to design Peacemaking initiatives of their own, this research draws upon the strengths and local resources used by Kake citizens to create a sustainable restorative practice and process in their community.

Peacemaking is not anything new in Native communities. Instead, resolving conflict using traditional values and practices is a revived practice after years of oppression by the Anglo-American legal system. The local design of Peacemaking is practiced both as a way of life and as a process to keep communities intact in the journey towards community wellness. There is an abundance of literature on maintaining peaceful relations between tribal members,

clans, and other tribes all over the world using Indigenous Knowledge (Kunnie & Goduka, 2006; Ross, 2006; Hamilton, 2001; McCaslin, 2005).

Law is embedded in our ways of thinking, living, and being. For Indigenous Peoples, law is far more than rules to be obeyed. Law is found within our language, customs, and practices. It is found within the carefully balanced relations of our clan systems and our extended families. It is also found in ceremonies and rituals. Law is a whole way of life. Through countless means, our traditions teach us how to be respectful of others and mindful of how our actions affect them (McCaslin, 2005, p. 88).

Research Question

A 2013 comprehensive study completed by the Indian Law and Trust Commission appointed by President Obama states that Alaska's approach to criminal justice is "fundamentally on the wrong track" for Alaska Natives (A Roadmap for making Native America safer, 2013, p. 42). In a closed justice field that is an extremely centralized top-down system, there historically has been very little interest, until recently, for more input and participation from rural villages* for design of dispute resolution initiatives to address local juvenile and misdemeanor cases. Increasingly, tribes are receiving funding to develop Restorative Justice programs, but there are very few communities where volunteers design local Peacemaking practices. The Circle Peacemaking design of Kake is one of the few exceptions when local community volunteers designed a dispute resolution process and volunteered to serve in the circle. This ensures that Peacemakers are always available in Kake.

Today, when residents of rural, and often remote, Alaska are charged with minor and misdemeanor offenses, they are usually processed through the corrections system located outside their villages. Often, when young offenders from my village must leave their homes and families to enter into detention homes, they return home more lost and confused than before and become

*Author uses rural villages and communities interchangeably throughout the dissertation.

versed in criminal behavior learned during incarceration. More often than not, probation officers' only contact with them is by phone. Additionally, probation officers are usually strangers who live outside the young offenders' communities. The family support system is usually excluded from the process, leaving a large gap between the returning wrongdoer, family, and community members. With all the interest in design of dispute resolution initiatives for Native peoples in rural Alaska, this case study of Circle Peacemaking in Kake, Alaska asks the question: "What are the elements of design for Circle Peacemaking, that create a sustainable dispute resolution process in Kake?"

Purpose of this Study

Since 2013, the State of Alaska judicial field shown increased interest in working with the Natives of rural Alaska, as reflected in their annual reports to the legislature. The State has demonstrated this interest by adding more local options for community-designed processes in rural Alaska through recent additions to the rules of court and legislative statutes. Some communities may choose a peacemaking process. Today, there exists close to 300 small remote* Native communities in Alaska who have the options of designing a dispute resolution process of their own.

Problem Statement

The Native population of Alaska makes up an alarmingly high population in the correctional system. According to the Alaska Department of Corrections (2016) Offender Profile, the adult Native population makes up nearly 35% (34.52%) of the imprisoned population in the correction facilities (p. 11). The Native juvenile offenders make up nearly half of referrals to the Alaska Division of Health and Social Service, Division of Juvenile Justice (2018). The

*Author uses remote and rural interchangeably throughout the dissertation. Remote and rural refers to Native villages that often are outside the road system and located outside the major hubs, towns and cities in Alaska.

statistics are of concern because the Indigenous** population makes up only 15% of the population of Alaska (U.S. Census, 2016). Most of the criminal cases in rural Alaska are processed through a centralized criminal justice system in major towns and hubs, though the trend is changing with tribal courts.

When the Alaska Territory became a state in 1959, the new administration placed magistrates (local judges) in the interior rural regions and elsewhere in Alaska. This was a clear message for the Native people of my village and other rural communities that the law of the land was no longer local, but instead officially adjudicated, processed, and determined within the walled chambers of a distant courthouse. It didn't take long for studies to show that the small population of Native people had become a large population within the confines of the corrections system. Over the decades, the federal and state governments have spent millions of dollars in studies and attempts to remedy the problem of over-representation of Native people in the corrections system, but with few results. The solution may be within the communities to design a Peacemaking process that does not rely on outside sources, or their funding.

Pierre Bourdieu – The Juridical Field in Alaska

The term “juridical field” was coined by French sociologist Pierre Bourdieu to describe the culture within the criminal justice system influenced by money, prestige and power while creating rules and law. Within this cultural field is the influence (conscious or unconscious) that dictates how one dresses (e.g., attorneys in black suits, judges in robes, etc.), the speech used to address one another, the golf courses, the lunch spots, and closed picnic events. “Bourdieu's central claim is that the juridical field, like any social field, is organized around a body of internal

** The words "indigenous" and "indigenous Peoples" are synonymous with “Native” and "Alaska Natives".

protocols and assumptions, characteristic behaviors and self-sustaining values—what we might informally term a "legal culture." (Bourdieu, 1987).

Simply stated, Bourdieu's field theory conceives late modern society as comprised of a series of inter-related and overlapping cultural fields wherein actors manoeuvre to increase or retain their share of various forms of capital (i.e. status and resources) (Kelly, n.d.)

This is important in the context of this study to demonstrate that Native people are influenced by the juridical field, and naturally so in many cases. Within the juridical field is both the Circle Peacemaking governed by Tlingit ancient laws and practices, and the Criminal Justice System (CJS) governed by Anglo-American laws, procedures, and policies. The tribal courts, established by federal legislation of the Indian Reorganization Act in 1936, is also influenced by the juridical field.

However, change is in the air as the oil industry in Alaska continues to diminish, meaning less state revenue for all service fields. As a result, the criminal justice field is seeking new and innovative ways to reduce service to rural Alaska and is referring cases towards tribal courts and local community-designed Restorative Justice initiatives. In fact, it has only been in recent years that the centralized judicial system and legislation have shown interest in decentralizing their system and placing juveniles and misdemeanors in the hands of tribal courts and community Restorative Justice processes. "Restorative Justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation" (Alaska Rules of Criminal Procedure Rule 11 (i)).

The demographics of rural Alaska and its residents suggest Restorative Justice processes will help increase local participation in dispute resolution and crime prevention, provide a justice focus that is less adversarial, and better meet small community needs and cultural preferences for reconciliation (May, J., Fall 2014/Winter 2015).

It is time that the government should begin to look for answers from local people in rural Alaska, who may know the best approach to working with local offenders. Currently, there are no

statistics that show the population of Natives removed from the small communities and villages where an offense occurs, but it can be determined that they are removed from the village to their mental detriment. (A Roadmap for making Native America safer, 2013).

Alaska's approach creates and reinforces discriminatory attitudes about Alaska Natives and the governing capacities of Alaska Native Tribes. As long as the system that helped create the problems is allowed to persist, the general public will be tempted to assume that the fault lies with the victims – when instead, Alaska Natives and Alaska Native Tribal governments have had relatively little say in the way crime and justice are addresses in their communities (A Roadmap, 2013, p. 47)

Anglo-American and Indigenous knowledge fields.

Though not a comparative study, this paper looks at two sets of knowledge fields within the criminal justice system in Alaska: the Anglo-American knowledge field* and the Indigenous knowledge field. The online Merriam-Webster dictionary defines systems as “a group of related parts that move or work together” (n.d.). Within the criminal justice system, the Anglo-American field is comprised of judges, lawyers, social workers, probation officers, policymakers, mediators, and personnel who work together within the system to accomplish certain goals. This field is based on Anglo-American values, knowledge, and tradition. Until recently, the Indigenous ways of knowing, or knowledge field, was often left out of the criminal justice system, though Native people make up most of the population within this system. The design of the Peacemaking Circle in Kake and other Indigenous ways of peacemaking falls within the Indigenous knowledge field in order to create balance and maintain good relations between clan and family members and the spirit world. This knowledge field recognizes the importance of respect with all living beings. Living in social balance with one another was

* A "field" is a sociological term used by sociologist Pierre Bourdieu to describe the environment where individuals he called "actors" or "agents" interact. Each actor or agent is pulled to conform by forces in the field (social, economic and cultural) and the rules of the field.

necessary for survival, especially during the harsh, unforgiving environments of Interior Alaska. People looked out for another with food, shelter and clothing.

The incursion of Anglo-American values and practice within the government courts, policies, schools, and churches have all but snuffed out the ancient knowledge and practices of the Native people. The settlers began this erasure with the Russians' directives to relocate and enslave Aleut people from their homelands and continued when the United States purchased Alaska in 1867. In the early part of the 20th century, the federal government established boarding schools that forcibly removed children from their parents and relocated them to a foreign school where their Native language was forbidden. (Hirshberg & Sharp, 2005). These are but a few examples. Upon the purchase of this region called Alaska, the U.S. government created schools and churches to assimilate the cultures of what they considered non-white "others". There were also the mass deaths from disease brought by the gold-seekers and others. However, before the upheaval, the Native people of Alaska had practices in place to resolve disputes and correct bad behavior. They still have the teachings and values that have been passed down from generation to generation by the teachings and stories.

Indigenous planning in peacemaking.

Native ways of resolving conflict and maintaining a community based on Indigenous values and practices existed before the advent of colonialism. Hirini Matunga defines Indigenous Planning (IP) as "planning by, rather than planning for these communities," and a form of planning that is continually evolving with change and "practiced since time immemorial" (2013, p. 3). Indigenous planning and design takes into account its history, origins, current conditions, and future planning for the next generations (Walker, Jojola, & Natcher, 2013). For the citizens

of Kake, IP is planning and designing “things that matter to them the most” (Hibbard & Adkins, 2013, p. 99).

Dispute systems design.

In the 1970s, negotiators and academics William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg pioneered the term “Dispute Systems Design” (DSD) as a method they used for resolving frequent strikes and lockdowns at the Caney Creek Coal Mine in Mulenberg, Kentucky. The corporation was in need of a new system of conflict management that could deal with conflicts quickly and efficiently before they escalated into the frequent strikes and lockouts, which had been occurring almost routinely at this mine (Amsler, Martinez, & Smith, 2015; Ury, et al., 1988). “DSD evolved over the decades, from resolving disputes in labor union strikes to managing conflict in the courts, workplace employment, business transactions, organizational conflict, communities, governments, and in the global theatre” (Rogers, Bordone, Sander, & McEwen, 2013, p. 388). Over the years, DSD has expanded for use in larger, more immediate contexts such as lawsuits involving several plaintiffs, and disasters such as airline accidents, national emergencies and international transactions and treaties” (Rogers, et al., 2013). DSD is used in emergency context and global systems for policy development. Today, DSD is taught in law schools and practiced by lawyers, negotiators, mediators, and planners.

Significance of Research to Designers of Peacemaking Circles in Rural Alaska

The purpose of a justice system in an Aboriginal society is to restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged (McCaslin, 2005, p. 100).

I acknowledge that I am undertaking an idiographic rather than a nomothetic approach. The Tlingit Peacemaking practice in Kake stands out as a model that can inform other Native communities of the action steps they can take in order to design and resurrect an effective,

sustainable, and restorative practice in their communities. Acknowledging that every Native village or community has its own unique traditions and practices, it is nevertheless possible to look to the Tlingit Peacemaking process in Kake as a model of self-determination and sovereignty. The current study answers questions as to why and how the Circle Peacemaking in Kake initiative has worked so well despite its emergence in an otherwise largely dysfunctional and faraway external judicial environment. Moreover, the study teases out all the structural factors and community dynamics necessary to ensure that a tradition-based and locally developed restorative program can succeed and sustain itself long-term.

Significance to the Literature on Indigenous Planning and Dispute Systems Design

Though there is prolific account of the virtues of Peacemaking Circles both in and out of the Indigenous context, there is little research on the community-based design of Peacemaking in a small rural community. This research focuses on the community-based design of Circle Peacemaking in Kake and takes into account the Principles of Indigenous Planning and Dispute Systems Design used to create the local peacemaking initiative.

Methods and Design for Gathering Information

In order to gather information in the design of Circle Peacemaking as a case study for community design and sustainability, I explored the interviews shared with me by Kake and Canadian Peacemakers and designers, looking for patterns supporting local designed processes in rural Alaska. I reviewed case law, state statutes, and rules of Alaskan court, as well as Judicial Annual Reports to the Legislature that suggested a legal environment that promoted local design of restorative practices.

This case study is descriptive and utilizes a qualitative methodology. I gathered most of the information through interviews conducted with Peacemaking practitioners in Yukon, Canada,

and the original members of the Healing Heart Council in Kake who designed Circle Peacemaking. These were longtime community Peacemakers and supporters of the Peacemaking Circle process. In addition, I observed the community by walking around the town and engaging with community members and events.

Conclusion

In summary, this study examines the elements of local design of the Peacemaking Circle in Kake within the framework of social theory indicating that invisible but very real forces will affect our decision to conform to a foreign field of knowledge and practice. The study also recognizes and uses the elements of design found in Indigenous Planning and Dispute Systems Design necessary for sustainable Peacemaking. For a long time, the Native people's ways of maintaining balance in their communities went underground, but the ancient laws and practices were not forgotten.

Chapter 2: Literature Review

Introduction

Indigenous Peacemaking laws, sometimes referred to as *ancient laws* or *law of the land* (Jackson, 2014), and known in cultural studies as ‘customary law,’ are practiced by Native people to maintain good relations between other people, the land, and the spirit world. In interior Alaska, where the temperatures and terrain can be unforgiving, one important law for survival is to look out for one another. One example is to make sure the homes are warm and that there is enough wood and food. The ancient laws recognize the importance of maintaining good relations with opposite clans and visitors to the land and in supporting members of one’s clan in times of need, like in the passing of a loved one. In my home, the Upper Tanana river region of Alaska, there is a word in our language that warns us against breaking the laws. It is called *Ihjih* (pronounced ee-jii), which means bad luck if the law is broken. The lawbreaker offends the clan, spirit world, ancestors, and the unborn. These laws are taken seriously by our elders and others who abide by them. There is a warning to watch our thoughts and words, intentions, and actions. There is a saying in my language, “*oo ina’ iits’iĭ*” meaning, “the breaking of these laws may result in bad luck.” Literally the saying says, “Enough. That is scary.” So, in following the laws and practices, the people are in essence practicing principles of Peacemaking in their communities by maintaining good relations with all living beings seen and unseen. Ancient law is practiced by Indigenous peoples all over Alaska and the world:

Indigenous peoples throughout the world have sustained their unique world views and associated knowledge systems for millennia, even while undergoing major social upheavals as a result of transformative forces beyond their control. Many of the core values, beliefs, and practices associated with those worldviews have survived and are beginning to be recognized as being just as valid for today's generations as they were for generations past. The depth of Indigenous knowledge rooted in the long inhabitation of a particular place offers lessons that can benefit everyone, from educator to scientist. (Barnhardt & Kawagley, 2005, p. 9)

The return of Peacemaking Circles indicates that within the last two decades, the practice of traditional Peacemaking is returning to the Native communities and also becoming part of the tribal court system. The Navajo Peacemaking Court in Arizona was one of the first tribal Courts to develop Peacemaking into their courts when it was developed in 1982 in response to “dissatisfaction with western approaches to conflict resolution” (Gross, 2001, p. 4). The context of settler-colonial history in Alaska plays an important role in understanding why the local design of Circle Peacemaking is a phenomenon in rural Alaska.

This chapter covers the literature on federal and state governments' relationship to the tribal governments in Alaska, the designs of tribal courts, Peacemaking Circles on Native American reservations and in Kake, and the attempt to design a Restorative Justice program in the Upper Tanana region of Alaska. In addition, this chapter covers the principles and steps of Indigenous Planning and Dispute Systems Design. Finally, this chapter reviews theory of design by French sociologist Pierre Bourdieu, DiMaggio and Powell, and Indigenous theory – namely the Safety Zone Theory.

History of Federal Government's Relationship to Tribes

There are 229 tribes in Alaska, nearly half of the 562 federally recognized tribes in the United States. Most of the Alaska tribes are located in remote villages only accessible by plane, snow machine or boat.



Figure 1. Map of the Road System in Alaska

<http://geology.com/cities-map/map-of-alaska-cities.gif>

The 562 tribal governments, including the ones in Alaska, are recognized by the federal government as sovereign governments to govern with “limited power of inherent authority” (Case & Voluck, 2012, p. 369). This relationship was established by the Indian Reorganization Act in 1934 (brought into effect in Alaska in 1936) in order to establish tribal governments and to create tribal constitutions. There are many restrictions to tribal government jurisdiction, but the federal government recognizes the government-to-government relationship. Though tribal nations can be regarded as small nations within a nation, they are not foreign nations the same way that Canada or New Zealand are foreign nations. Instead, the tribal governments are defined

in the United States Constitution as “dependent domestic nations” with restrictions (Worcester v. Georgia, 1832). Today, most tribal governments have their own constitutions. Within the tribal government structure there are the three branches of government similar to the United States’ government structure. The three branches within the tribal governments are the executive branch (administration), the legislative branch (tribal council), and the judicial branch (tribal courts). Most of the tribal courts nationwide and in Alaska are in various forms of design. Their jurisdiction is often defined by legislative acts and court decisions.

State of Alaska’s Relationship to the Tribal Governments in Alaska

The tribal governments in Alaska have a more recent history of contact than the American Indian tribes in the contiguous United States. The treaty period between tribes and the federal government ended in 1871, only five years after the United States purchased Alaska from Russia. As a result, the treaties that created reservations for “outside” tribes did not apply to Alaska, with the exception of one reservation created by Congress in 1891. This reservation is located on the Annette Island Reserve in southeast Alaska for the Tsimshian Native people of Metlakatla. For other tribes, this lack of boundaries has created confusion and lawsuits over jurisdiction for the Native people in Alaska. Most of the land in Alaska is under state and federal jurisdiction. Though Alaska Native corporations own land, the land is still subject to state law. All the villages and communities in Alaska fall under state and federal jurisdiction, though Native allotments fall into a grey area, as it is, in fact, deemed tribal land. Throughout the years, the Alaska state government has fluctuated in their relationship with the tribes, resulting in several court cases that either limited or expanded tribal court jurisdiction.

As for tribal court design, as in the Anglo-American court of law, many tribal court judges in Alaska are trained to practice arbitration as a form of justice in tribal courts. For

example, the tribal judges hear evidence of family cases, weigh the evidence, and present their final decision to the families involved. The process takes place within severe time constraints with heavy caseloads. Most of the judges are volunteers who take time off from their normal work duties.

Without boundaries, or “Indian Country” as it is commonly known in Alaska and the United States, it has been an uphill struggle for tribal courts to exercise tribal jurisdiction. To be sure, the State of Alaska Court system, the state social service agencies, and the Indian Child Welfare Act (ICWA) recognize tribal courts and work with tribal governments. But the current administration has only recently recognized tribal sovereignty. In contrast, the federal government has recognized tribal sovereignty in Alaska since 1994. “Beginning with the earliest judicial decisions of the U.S. Supreme Court, Native American communities are acknowledged to possess inherent sovereignty as a matter of federal common law” (Case & Voluck, 2012, p. 373).

Throughout the years, the relationship between the State and tribes in Alaska has been confusing and often conflicting. Today, Alaska tribes do have authority over their programs and their citizens as defined by their tribal constitution, and there is Indian Country in Alaska (Case & Voluck, 2012). The grey area of state jurisdiction began in 1953, before Alaska became a state, when the federal government passed Public Law 83-280, which placed state law and jurisdiction *in concurrence* with the tribal law and court. “P.L. 83-280, an outgrowth of the termination policy of the 1950s, conferred automatic jurisdiction on five states over civil causes of action and criminal offenses involving Indians in Indian country” (Case & Voluck, 2012, p. 393). This legislation, as interpreted by the state courts, created the authority to establish jurisdiction over criminal offenses in villages in rural Alaska. Alaska was still a territory at that

time and was added as the 49th state in 1959. When Alaska became a state, the new state government placed magistrates (judges who often do not hold law degrees) in several remote locations throughout the state. This further diminished Native local control and power in the villages. In addition, many Native villages became incorporated as “municipalities under territorial or state law” (Case & Voluck, 2012, p. 371).

The Alaska Native Claims Settlement Act (ANCSA) passed by Congress in 1971 created further confusion and conflict over local sovereignty and autonomy for tribal governments. Instead of creating reservations with boundaries for the Native people in Alaska, this unprecedented congressional land claim act divided Alaska into 12 geographical regions, creating 13 Regional Native Corporations and around 225 village corporations to oversee the land but still abide by State law. One corporation, the 13th Regional Corporation is not land-based. Under the umbrella of the Native Corporations, a village corporation was established for every village.



Figure 2. Map of 12 Native Corporations in Alaska

<https://www.doi.gov/ost/fto/alaska/wau-names-alaska-region>

The Alaska Native Claims Settlement Act (ANCSA) of 1971 transferred title of land to 12 Native corporations and nearly 200 village corporations. As a result, the tribal governments did not receive land and were left out of the land claims settlement. Today, most tribal courts and councils have little or no governing power on the corporation lands. Because of the conflicting goals, several of the regional and village corporations do not work closely with the tribal governments, and the corporations may work against tribal interests in preserving land for future generations. ANCSA did little or nothing to empower the sovereign rights of tribal governments. In 1998, the Supreme Court determined that Alaska Native tribes indeed are not “Indian Country” in the case of *Alaska vs. Native Village of Venetie* (1998), a Supreme Court case. This further diminished local control.

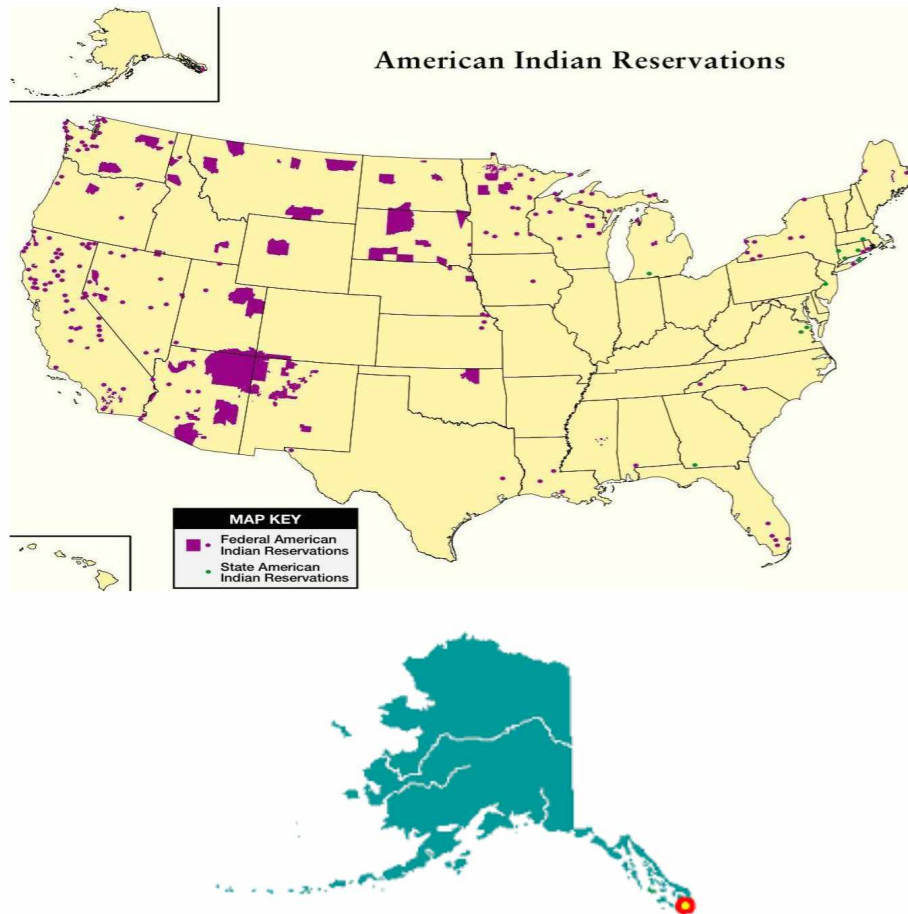


Figure 3. Maps of Reservations and One Reservation in Alaska

Maps from:

<https://www.mydigitalchalkboard.org/portal/default/Resources/Viewer/ResourceViewer?action=2&resid=19850> ; <http://explorenorth.com/library/communities/alaska/bl-Metlakatla.htm>

As a result of defined boundaries, as in the reservation structure, the tribes on Native Reservations may have a semi-closed system that may not encourage “outsiders” to influence their design of Peacemaking Circles or governance. This is not the case for many of the tribes in rural Alaska, who may depend on outsiders to teach them Peacemaking principles, or may depend on outside sources of funding that may dictate how Peacemaking circles are designed. Often, the funders encourage restorative justice programs that are run by a paid employee within the tribal government. I encourage any form of restorative practice for communities who benefit

from the programs. In addition, the Indigenous values and practice of Peacemaking is sustainable and influences the local design of the Peacemaking circle because it teaches Indigenous values and practices.

Peacemaking is a Way of Life

“The successes of Kake Circle Peacemaking rely on the village's determination to understand and utilize its most salient characteristics as strengths” (Kake Circle Peacemaking, 2003).

When a traditional law has been broken, it results in broken relationships (Battiste, 2000; LeResche, 1993; Pranis, Stuart & Wedge, 2003). Some call Native law *Sacred Justice* (LeResche, 1993). Peacemakers focus on reconciling and mending relationships, and addressing the underlying causes of a disagreement (which are often perceived as indicative of someone's failure to live according to prescribed spiritual ways). Sacred justice is found when the importance of restoring balance to relationships has been acknowledged and achieved. However, the Peacemakers within the circle are not the “healers” (Jackson, 2016, private conversation). The role of the Peacemakers in the Circle is to guide the offender back to the right path by their teachings, stories, and experience. Equally important to the circle, the Peacemakers are there to offer support to the victims and wrongdoers. Peacemakers are invited members of the community who are interested in contributing to the well-being of the community. As the Keeper of the Circle in Kake, Jackson facilitates the process as an equal member of the Circle. Peacemaking is used to transform intense, hurtful emotions into one capable of repairing the harm caused by wrongdoing. Sacred justice goes beyond the techniques, rules, and procedures for handling conflicts; it is spiritual. Peacemaking includes apologies and forgiveness, generosity, and a peaceful attitude. Processes that seek sacred justice involve people working together for the mutual benefit of everyone in their widest circle of family, clan,

and community. It is the giving of advice, and the recalling of people's responsibilities toward one another (Leresche, 1993, p. 894). It seeks to help people reconnect with the higher spirits.

Some Native tribes may have another process for Peacemaking and use their own language to define the process. Each tribe is unique in the practice of resolving conflict and maintaining good relationships. There is not a “one size fits all” process that fully describes Peacemaking. For conflict prevention, the citizens are taught Peacemaking through stories, potlatch, teachings, and practice. For example, in Tlingit country and in my own Dineh region, one form of Peacemaking practice is through funeral and memorial potlatches. Potlatch is a community-wide event that invites distant relatives and opposite clan members for the ceremony of food and celebration, maintaining relationships between clans. In my region, potlatch can be a public place for repairing broken relationships by the giving of money or gifts.

Though the term “Peacemaking Circle” originated with the terminology associated with Native American processes, today Peacemaking Circles can be practiced anywhere people practice Peacemaking principles in their lives and practice. For example, Peacemaking is practiced by non-Natives across the United States, such as the Red Hook Peacemaking Circle in inner-city Brooklyn, New York (Red Hook Peacemaking Program, 2015). In addition, Peacemaking Circles can be used in schools, workplaces, and by families to resolve conflict and restore balance.

The Design of Circle Peacemaking Process in Kake

Because the tribal court structure is designed to resemble the Anglo-American common law court structure \ there has been an increased dissatisfaction with both the process and outcomes within the last few decades. With the diminishment of interest in the Anglo-American common law court structure comes more interest and initiatives in the design of restorative

practices based on traditional law. In fact, there has been an increased interest in the design of Peacemaking Circles as part of the judicial process. For example, Peacemaking Circles have been designed within the tribal court structures in the Navajo Nation, the Pokagon Band of Potawatomi in Michigan, the Chitimacha Tribe of Louisiana, the Chickasaw Nation in Oklahoma, and the Arapaho Tribe of the Wind River Reservation, Wyoming to name a few.

In a 2010 study, the State of Alaska evaluated the effectiveness of Kake Circle Peacemaking. In this study, state court administrator Neil Nesheim contrasted the recidivism rate of Kake Circle Peacemaking participants to a “control” group in Hoonah State Court, a nearby community. He reviewed the Kake Circle Peacemaking records and found a discrepancy in recidivism rates to the ones recorded by the State. Despite this discrepancy, the recidivism rates were still much lower than the State’s rate in general. The study was supportive of Kake Circle Peacemaking in general, though he offered several suggestions for improvement.

The Circle Peacemaking in Kake has had a journey of its own along the years in its relationship to OVK, the tribal government, which has been supportive of the practice. Today, the Peacemaking codes are embedded in their tribal court code of law. Referrals to Circle Peacemaking have remained flexible through the years. In the beginning, the Circle Peacemaking practice was entirely non-funded and on a volunteer basis. However, there was a time when OVK received funds to employ a Peacemaking coordinator who facilitated Circles for young wrongdoers referred by the state agencies, courts, and the local Magistrate Jackson. When the funding process ended, the referral process returned to a volunteer basis outside the tribal government structure. Today, the Peacemakers still hold Circles when cases are referred to them. Sometimes, the Circles are very confidential for families who choose to use this process. The study of the design of the Peacemaking Circle outside the tribal government structure does

not diminish the role of tribal governments and, most especially, their courts. It is noteworthy, however, to know that the Circle process in Kake is designed and practiced using volunteer efforts. This study explores the elements of design of Circle Peacemaking in Kake. The first element all designers of Indigenous efforts should consider is the principles of Indigenous Planning involved in planning of a Peacemaking initiative in a Native community.

Indigenous Planning (IP)

“If Indigenous peoples were planned into oppression, equally they can be planned out of it” (Matunga, 2013, p. 31).

The principles and practices of Indigenous Planning (IP) exist all over the world with ongoing active participation from local voices and authority regarding their communities. It stems from an autonomous system of Native people planning for their own health and well-being. Native peoples plan “according to their own traditions and sets of practices” (Walker et al., 2013, p. 5). With the advent of colonialism, the Indigenous peoples lost local control and authority. In Alaska, it still is difficult for IP to be part of the overall plan for a Native community in rural Alaska, most specifically in the justice field, because of the power held by the Anglo-American system and outsiders in terms of funding and influence. One example is the imposition of a foreign field upon the education of the Alaska Natives. Since the Anglo-American education system was imposed upon the Native population at the turn of the century, it has systematically removed and ignored Indigenous knowledge systems though the predominant population in a majority of schools in rural Alaska is Alaska Native students. This is slowly changing as Native communities begin taking responsibility for the education of their young people.

1. Pre-Contact: Classic tradition where management of environment and interactions was based on traditional knowledge, worldviews and values without external influence (Matunga, 2013, p. 9).
2. Post-Contact to 1970s: Resistance traditions of Indigenous planning were reactions to the colonization. The primary aim of the colonial government was to exterminate or marginalize Indigenous people during this era of “white is right.”
3. 1980s: Resurgence Tradition began with Indigenous protests over the injustices (Matunga, 2013, p. 13). The pressures to conform or assimilate to the Anglo-American ways should be at the forefront of intention to any designer of change in a village community.

Figure 4. Indigenous Planning Timeline, Matunga, 2013.

On the same note, the Native people of Alaska practiced traditional ways of resolving conflict before the advent of the Anglo-American system. Today, the criminal justice system in Alaska is overpopulated with Native offenders, as stated in Chapter 1. The courthouses in rural Alaska are revolving doors for many of the offenders.

In 1995, the term “Indigenous Planning” resurfaced as a new theory of action, and the Indigenous Planning Network (IPN) movement was born. Today, the IPN is a unit of the American Planning Association or APA. As a foundation, the IPN has its five basic principles:

1. People thrive in community.
2. Ordinary people have all the answers.
3. People have a basic right to determine their own future.
4. Oppression continues to be a force that devastates people.
5. The people are beautiful already.

Today, IP is used in political context as another voice to the larger planning network in mainstream planning. IP looks at how far our Indigenous communities are going to “re-establish

ourselves” (Jojola, 2014). “[I]ts principles are actually a reformulation of practices that have been used by ‘traditional’ communities for millennia” (p. 4). Today, IP is a political strategy aimed at improving the lives and environments of Indigenous peoples, and it serves as a bridge between mainstream planning and Indigenous practices (p. 5). “The paradigm shift needs to move away from the western way of thinking and fixing Native people to the one that respects the indigenous worldview of community and kinship” (Hyslop, 2012, p. 20). Some principles of IP identified by author Hirini Matunga, in the book *Reclaiming Indigenous Planning*, (2013) are as follows:

1. Recognize[s] diversity. There is no “one size fits all” to planning in an Indigenous community. Matunga warns that theorizing and mapping out Indigenous planning, except as an evolving practice, is a “risky business” (p. 3) because each community is distinct from one another.

2. “Improve[s] the lives and conditions of Indigenous peoples” (p. 3).

3. Refuse[s] ongoing exploitation and [does] not get consumed by it. Accomplishing this requires creativity, innovation and reflexivity. Reflexivity means that Indigenous planners must be aware of the dominant forces to pressure them into conforming to their rules and regulations, thus resulting in the practices of State Courts who use punishment as a practice.

4. Respects a strong tradition of resistance to exploiters.

5. Predates colonialism.

6. Includes community/kinship.

7. [is] Place-based.

Dispute Systems Design (DSD)

“We use the term design with intention. A design is not random or arbitrary. By design we mean the intentional creation of a system or a process to achieve some end or set of goals” (Rogers et al., 2013, p. 4).

Dispute Systems Design (DSD) is a field of practice developed by mediators in labor relations in combining the steps used in both alternative dispute resolution (ADR) and organizational development (OD). The success in creating successful conflict management and prevention strategies show that DSD is used today in public agencies, government organizations, private sector corporations, and the like. DSD even found a home at the U.S. Postal Service as an integral part of the Redress Program after several shooting tragedies. Today, the principles and restorative practices of DSD are beginning to open up to each other as complementary disciplines as policy makers search for solutions to an overburdened, inefficient, and increasingly faltering criminal justice system.

The DSD process is the creation of a set of processes to assist organizations, nation-states, institutions, and individuals to settle conflict. The old system of resolving organizational disputes usually ended up in litigation or strikes, both costly. The DSD process is interest-based, meaning it examines the interests of all the stakeholders involved in a conflict and seeks to find satisfactory solutions. The field of DSD serves to inform systems in the managing or resolving of conflicts or disputes (Amsler, Martinez, & Smith, 2015). Dispute Resolution is nothing new and practiced in every society (Brahm & Ouellet, 2003), from elders telling stories as a teaching tool to mediation efforts by local leaders:

Dispute resolution around the world and through history has ranged from village elders fostering conciliation in communities, religious leaders mediating family conflict, and commercial experts arbitrating business disputes, to contemporary formal court proceedings (Amsler, Martinez, Smith, 2015, p. 58).

One of the basic motivations to use the principles of DSD is to reduce the cost of conflict within the workplace by designing systems that involve mediation and/or arbitration, to name a few forms of alternative dispute resolution (ADR) processes within an organization. “A dispute resolution system, when in practice, is designed to reduce the costs of handling disputes and to produce more satisfying and durable resolutions” (Ury, et al., 1988, p. 42). It is safe to say that the decreased supply of oil revenue is creating more interest in local design of conflict resolution systems in rural Alaska. More than 1/3 of Alaska’s jobs come from the oil revenue:

Alaska is the only state in the union that is so dependent on one industry to fund its government services. Since the completion of the Trans-Alaska Oil Pipeline, petroleum revenues to the State of Alaska have averaged over 85 percent (AOGA:AlaskaOil and Gas Association, 2018).

In Alaska, the design for addressing wrongdoings for Native people in rural communities was set in place by a distant and impersonal centralized criminal justice system. Numerous studies have shown that this system has not been effective for Native people. This has led to increased discussions between the justice field and tribes to share ideas and processes to create an effective design. There are a myriad of ways that the guiding principles of DSD are used in the design of mediation programs within workplaces, schools, and communities. DSD is practiced in the design of Restorative Justice initiatives in high school settings to resolve the effects of bullying behavior. DSD can be used to improve older dispute resolution systems within a workplace. As mentioned before, mediation and arbitration are often preferred models of institutional conflict resolution to offset the cost of litigation or workplace loss in productivity.

Interests based methods: Stakeholders can talk about their concerns, needs and desires. The “why” of a problem. Use methods grounded in such principles to arrive at resolutions that are mutually acceptable and satisfactory.

Rights based methods: Grounded in fixed rules, principles, entitlements, merits, credibility, positions; i.e., litigation, binding arbitration. Questions of equity and justice are resolved through determinations devoid of power contests.

Power based methods: Power based methods rely on who has more power; violence, war, and strikes. Unfortunately, many disputes are resolved through this method. In an effective system, few (if any) disputes are resolved through power.

Figure 5. Interest, Rights and Power Based Processes

Organizations tend to develop internal conflict for a myriad of reasons, ranging from personality conflict, power struggles, poor communication, lack of leadership, lack of integrity, overly bureaucratic systems, differing expectations, and unclear job expectations to name a few. The biggest problem for many organizations is a lack of an effective dispute resolution system to resolve differences before they create bigger problems that can lead to litigation. A conflict should be resolved as soon as it arises by listening to all the stakeholders involved. This will allow a forum to resolve conflict if possible. The most important ingredient to resolving conflict is the goodwill of the people involved. They must want to resolve the conflict in order to work together for the good of the organization. At the center of the DSD are three approaches for dispute resolution processes: (1) Interests (what people want), (2) rights (law and/or contracts), and (3) power (use of force or war). Authors Ury, Brett and Goldberg (1988) share the theory that all disputes are better resolved by addressing the needs of the parties. Designing dispute resolution systems that work for the disputants are cost-effective and have proven to be satisfactory for all parties (Ury, et al., 1988).

Steps and practices of Dispute Systems Design.

1. Define the Problem

The first step to creating any change within an organization or community is to define the problem(s) (Ury et al., 1988). Usually there is a “presenting problem” or a “perceived opportunity” that initiates change (Costantino & Sickles-Merchant, 1996; Rogers et al., 2013). “Organization leadership, stakeholders and constituents need to have a sense that something is amiss in the system and that a different way might be better, faster, more lasting, more satisfactory” (Costantino & Sickles-Merchant, 1996, p. 69).

Where there are two or more people working together there will be conflicts. Most conflicts are minor and can be cleared up and resolved fairly easily. However, some conflicts may be more serious. One question to ask is, “if there are conflicts within an organization, what type of conflict does the organization seek to address?” (Amsler, Martinez, & Smith, 2015). As members of a group, workplace, families, friendships and social interactions, Costantino and Sickles-Merchant (1996) encourage stakeholders to voice their differences to move from hierarchical or dictatorial decision-making and move towards consensus building and joint problem solving. Accepting conflict and encouraging choice, according to Costantino, requires an attitude of acceptance (not of fighting, fleeing, denying, avoiding) and an understanding of the power of choices (not either/or, right/wrong dualities) (p. 218). This idea of acceptance of conflict and free choice is important in an increasingly globalized world because it encourages conflict management skills and knowledge to learn and teach one another. The hope is that this process of acceptance will permeate to a deeper level of every aspect of human interaction and change (p. 219). This validates choices. The next step to building a dispute resolution process is described below.

2. Involve Stakeholders

Within every organization, stakeholders should be involved in the design of a dispute resolution process that will affect them in their daily workspaces. The practitioner or planner should work with them and not for them. If a dispute resolution system is built for them, they may not use it. Ownership means they may “use it, refine it, tell their friends about it, and make it their own” (Costantino & Sickles-Merchant, 1996, p. 49). It is useful to identify who the stakeholders are in an organization (Amsler, et al., 2015 p. 19). The designers can be inside staff members or outside consultants. The inside staff member can be someone from the legal staff, the human resources staff, or a staff member assigned the responsibility of gathering information. The outsider consultants or “experts” bring expertise and experience from their work with other organizations. They can be objective and independent of internal politics (Costantino & Sickles-Merchant, 1996). It is important to separate the people from the problem (Fisher & Ury, 1991), perhaps by asking a question similar to this: “What are the interests of the stakeholders in resolving the problems that they are experiencing in the workplace?”

3. Define Goals and Outcomes

Another step in the process is to set goals and outcomes. Stakeholders should have incentives and motivation to change. All organizations have many levels of conflict, from office politics to more serious scandals. A designer identifies goals that the organization may seek in regarding conflict by asking what types of conflict does the organization want to address, and what goals does the organization intend to accomplish. For example, the organization may only want to resolve internal conflict and not conflict with customers (Costantino & Sickles-Merchant, 1996 & Rogers, et al., 2013). Once the conflicts are identified, it is necessary to list the outcomes. Smith and Martinez (2009) provide a list of potential outcomes:

- Conflict prevention? Management? Resolution?
- Efficiency/resource savings: Minimize time of stakeholders, institution and/or neutrals; Minimize cost for institution and/or stakeholders? Reduction of number or type of conflicts?
- Relational: Transform or restructure relationships? Whose?
- Safety: Prevent violence against parties? Protect property?
- System operation: Enhance access to the system? Decrease caseload?
- Public recognition: Protect privacy? Provide public vindication? Create precedent?
- Substantive outcome: Increase “justice”? How defined?
- Fairness: Procedural? Substantive?
- Reputation (of individuals, organization)?
- Compliance: To sanction or punish? Deter future disputes?
- Satisfaction: Of all, or fewer than all, stakeholders? Durability of resolution?
- Organizational improvement: To identify institutional weaknesses or injustices and correct them?

Conflict is normal, but ongoing conflict is a sign that there is not a dispute resolution system in place to deal effectively with conflict. Organizations and communities have different approaches to conflict resolution. Some try to ignore the problems, thus creating more problems.

4. Prepare for Resistance and Constraints

One of the forces every organizational designer should be aware of is the resistance and constraints that will either be voiced or silent. Resistance can be due to change, even good change. There are many other reasons stakeholders are resistant to change. Costantino and Sickles-Merchant (1996) advocate for planners to “have tea with your demons” in an organization and to “get on the table what is under it” (p. 199), as one approach to resistance and constraints. “Either one puts a big rock in front of the cave and keeps the demons out with the person stuck inside, or one welcomes the demons for tea, starting with the small ones” (Costantino & Sickles-Merchant, 1996, p. 200). The demons of resistance and constraints can be

anticipated once they are out in the open. If not, they will prevent change. One way to work with resistance and constraints is to create long-term plans so one can see beyond the small problems. The design team should anticipate resistance every step of the way, plan for it, and decrease rejection of the new system.

5. Assess the Situation

Before any change is to take place, the design team must look at what currently is set in place to resolve conflict (Ury et al., 1988). “Dispute systems analysis is an essential skill in systems design” (Smith & Martinez, 2009, p. 125). Some organizations may not have any form of dispute resolution in place or, most likely, an ineffective system that results in low employee morale and job performance and often ultimately costly litigation. Recognizing the conflicts and disputes within an organization is another step in design.

6. Define the Conflicts and Disputes Resolution Processes Within an Organization.

Conflict is an expected given for any organization. Some systems may not be able to resolve all conflicts. “I came to realize that there were some conflicts that had only to be managed (not resolved), and some disputes that had to be resolved” (Rogers, et al., 2013, p. 388). Understanding the nature of disputes within an organization is important to predict the problems (Cavenagh, 2007). With this knowledge, organizations are better equipped to build preventative measures of dispute resolution into the foundation of a conflict management system. This is especially apparent when there is a change, such as a staff adapting to a strange new director when the departing one was a friend. This predicting of problems exists to encourage dialogue among the organization. This draws to the surface the interests of the disputants, using the interests as a way to craft modifications in order to resolving conflicts. Example methods of prevention are to offer workshops to teach communication skills such as improving interpersonal

communication, listening skills, consensus decision making, and creating multicultural awareness programs. To date, not much attention has been focused on preventative methods of ADR (Costantino & Sickles-Merchant, 1996, p. 128).

7. Evaluate the New or Renewed Process

There are several ways to measure the effectiveness or goodness of a dispute resolution system. One way is to measure the efficiency of the process. Is it saving money and decreasing the cost and time towards resolving conflict? If so, it is efficient. (Costantino & Sickles-Merchant, 1996). The second criterion is to determine the effectiveness of the process. Is it really working towards resolving conflict in an organization? Is this reflected in the nature of the outcome, durability of resolution (are disputes really resolved?), and effect on the environment? For example, is the image of the organization improved as a result of the dispute resolution process? The third criterion, and possibly the most important, is to determine the satisfaction of the stakeholders with the process, relationship, and outcome.

Pierre Bourdieu – Field Theory

Pierre Bourdieu, a French sociologist, is considered one of the most influential sociologists and anthropologists of all time. Of all the sociological theories describing one field's interaction with another field, the most useful theory to this study is his field theory that he describes as a social space where everyone within it knows the culture. Field theory is one of the closest links with Indigenous fields, because it considers the historical and interacting elements in any given field. When one takes into consideration the historical relationship between governments, then one understands more fully the Anglo-American colonization and its legacy within the context of the criminal justice field and its relationship to the tribal governments and Indigenous people in Alaska. A system is the interaction of moving parts. It

takes a holistic approach and looks at the big picture before analyzing the interacting elements within the fields. Bourdieu's field studies of the Kabyle indigenous cultures in Algeria in the 1950s-60s lead him to develop a framework of study on power relations in a society dominated by French colonialism (Bourdieu, 1962). Field theory examines the power relations between the various "actors" within a field. He referred to persons within the field as "actors" (Arnholtz & Hammerslev, 2013).

Bourdieu sees power as culturally and symbolically created. He defined field theory as the dynamics of power and politics between people and groups of people who compete for resources. Each field has a historical struggle with other fields (Bourdieu, 1984). Within the big picture of society are social fields that shape one's views, and the world is seen through those views. Bourdieu used the field theory as a unit of analysis through his studies. Extensive studies done by Bourdieu predict behavior and attitudes between the dominating field and other fields. This study specifically focuses on the relationship between the Anglo-American juridical field and the Indigenous fields in Alaska.

Field theory predicts that the Alaska legal system's "dominating" structure may create a climate of compliance for village leaders who will accept policies and programs not useful for their community needs. The pressure to conform to the larger dominant juridical field is based upon a "logic of practice," meaning that the one field, in this case the juridical field, makes rules and policies that may not apply to the Indigenous field. This knowledge is useful when considering legislation and policy that affects Indigenous lives in rural Alaska. In a field that is extremely centralized, such as the legal and corrections field in Alaska, it is hard to imagine how any local Indigenous practice can emerge, precisely because a centralized system, by its nature, does not easily accept or acknowledge new ideas. The community-designed

Peacemaking efforts using Indigenous knowledge and practice may not be recognized by juridical agents on the standard legal philosophical map.

Indigenous knowledge may be perceived by institutional agents within the Alaska legal environment as a byproduct of bygone times and not taken seriously. As a result, the Native people of rural Alaska, affected by outside policies and court rules, are often left out of the design plans for their communities. The behavior and attitudes of the field with the most resources, like the Alaska juridical system, towards other fields are ones of “Father knows best,” so the plans are made for, and not with the Native people in rural Alaska. The recognition of Indigenous knowledge and practice is helpful when considering how to create legislation and policy that will focus on community-design restorative practice programs in rural Alaska.

The culture within the juridical field – Habitus.

Habitus, according to Bourdieu, is the deeply ingrained socialized norms or tendencies that guide behaviors and thinking. It influences the learned thinking, behaviors, attitudes, beliefs in individuals, groups, cultures, societies, and nations and operates beneath the level of rational ideology (Bourdieu, 1990). Habitus is something we inherently possess and is part of our collective history. “The habitus-embodied history, internalized as a second nature and so forgotten as history – is the active presence of the whole past of which is the product” (Bourdieu, 1990, p. 56). Habitus is also the foundation of our culture. For example, a person who was raised in New York City may have knowledge of survival skills in a big city, such as looking out for his or her self. In contrast, an Indigenous person raised in rural Alaska may have knowledge of different survival skills, such as hunting, fishing, and the skill of looking out for self and for one another. So, if a person who was raised in rural Alaska moved to New York City, the hunting skills may not be appreciated or respected. Habitus, according to Bourdieu,

links conscious behavior and unconscious motivation. “The ‘unconscious’ is never anything other than the forgetting of history...” (1972). An actor’s action may be predicted by unconscious conditioned motivation. However, the individual agent also has the option to make conscious decisions among alternatives.

Within the juridical field in Alaska, habitus influences the learned thinking, behaviors, attitudes, and beliefs of the actors. Bourdieu states that habitus for actors in the juridical field is the “habitual, patterned ways of understanding, judging, and acting” (Bourdieu, 1987, p. 811). This is most evident in the Anglo-American approach to crime as it relates to criminalizing wrongdoers. Habitus begins within the structure of the juridical field, the attitude towards wrongdoers, and the beliefs and approaches to resolving conflict. The criminal justice field’s structure of top-down hierarchical approaches see crime as a violation of the law towards the State and attempt to determine guilt and punishment (Zehr, 2002). On the other hand, the Restorative Justice approach to wrongdoing shares the same principles as Indigenous Peacemakers that view crime as a wrongdoing that violates relationships and creates obligations to repair harm done and bring safety and well-being back to the community. It involves the victims, offenders, and community members in an effort to bring balance to the relationships and community. The central focus is on victim needs and offender responsibility to repair harm (Zehr, 2002). To add an extra layer, the Indigenous people seek a justice system where they can properly and fully express themselves with Indigenous Peacemakers who share the same history of oppression (Hamilton, 2001; Pranis et al., 2003). The Native people of Kake place traditional teaching as one of their core values in Circle Peacemaking. They share the value for elders’ wisdom by creating a space for elders to be placed in a position of honor in all community events.

In the Anglo-American courtroom, Native peoples' value systems often create a burden for the Native defendant. For example, Native people often admit guilt without adequate representation, because honesty is a core cultural value that often does not work in a legal system where defendant silence is often the best approach, with the attorney acting as the voice. This often leads to a guilty conviction without representation. This is an example of Natives being outsiders to a closed jurisdictional field where only attorneys, judges, and court workers know the rules and culture of the legal field. Honesty in a courtroom creates misattribution and conflict. Aside from habitus that is the "being" of agents in their field as learned behavior and attitudes, Bourdieu introduces the idea of "doxa" as knowing the rules of the game. "Indeed doxa is a normalcy in which realization of the norm is so complete that the norm itself, as coercion simply ceases to exist as such"

The rules of the game – Doxa.

An important concept in Bourdieu's understanding of power is that of "doxa," or the unspoken rules of the game for actors in the juridical field (Bourdieu, 1984). In Indigenous justice fields, such as Peacemaking Circles, is based on beliefs stemming from one's relation to the land, kinships, clans, the spirit world, and making right the wrongs that are committed. Doxa, within the Anglo-American legal system, is based on economy, power relations, and punishment. Doxa shapes the understandings of events, people, and interactions. For example, lawyers tend to frame and interpret disputes in terms of the Anglo-American law, i.e., an analysis of conflict of discrete legal interests. In contrast, Indigenous justice tends to frame and interpret disputes in terms of damaged relationships needing to be repaired. Each field is associated with a particular doxa. Bourdieu argues that for any particular doxa, one can trace the

historical circumstances that help produce it, as one can trace the origins of the legal field. The origins of ancient law has always existed so it cannot be traced.

Fields of practice.

Bourdieu understood the social world as being divided up into a variety of distinct “fields” of practice, like law, medicine, academics, politics, religion, art, and sports. While fields often overlap in a society, Bourdieu sees each field as being distinguishable and distinct from one another with their own set of rules and struggles for position. Positions within a field are taken by actors who have a stake in the field that are determined by the amount and weight of the capital they have. Conflict and competition happen within and between fields for monopoly of economic capital. The most important element within a given field is power, as it serves to structure the other actors in the field or actors in other fields. For the tribes, there is the ongoing struggle for jurisdiction and power between the state and tribes. Tribal court judges often live in the community and are Native. Often the tribal courts are constructed by the values and practices of the Anglo-American system.

For Peacemakers who often work as volunteers, there is no competition for resources. Putting capital gain aside, Indigenous knowledge has a distinct place in the juridical field. In the Indigenous field, the community values are life sustaining. The values promote, create and maintain good relationships between one another and they are not based on power and competition. Rather, the values are based on cooperation and collaboration, and looking out for one another. Indigenous capital includes a large family and clan system and a relationship of well-being with the earth, spirit world, and all living creatures.

Social, cultural, and symbolic capital.

Three forms of capital influence the juridical field. They are social, cultural, and symbolic capital. Social capital is based on group membership, relationships, and networks of influence and support. Members of the juridical field in Alaska such as the lawyers and judges know one another and may play golf together. Members of the court system may hold annual picnics at the park. They all know and socialize with one another. They are not likely to invite members of the tribal court to their social events such as the annual picnic at the park.

Cultural capital within a field is the knowledge, experience, or connections one has had throughout life. A Native leader in rural Alaska with place-based leadership contains cultural capital and often has more influence than an outsider with another set of knowledge, experiences or connections. For that matter, I consider myself an insider-outsider to the village where I was born, spent the first decade of my life, and returned three decades later. While I am a member of a clan there and I have history there, I missed out on many of the life events that create strong cultural capital. Life events include births, deaths, graduations, and rites of passages. While I am still a member of my community, my leadership in my own community is dependent upon partnerships with leaders with more cultural capital. For agents within the juridical field, examples of cultural capital are attending the same university, acquiring the same taste in music and arts, demonstrating the same cultural sensitivities, and creating a sense of collective identity and group position. One example of cultural capital at use is in the training for tribal judges in rural Alaska. Often the trainings are delivered from the Anglo-American cultural resources that teach western legal governance. In this type of court, elders may not play a big role. Often, power is not often direct, but its effect can be just as influential as in symbolic capital.

Symbolic capital is practiced indirectly through language, images, and symbolic meanings. In rural Alaska, it may influence Native people to accept their own “dire” condition as defined by outsiders as legitimate. Lawyers, and judges speaking in legal language to one another is a form of symbolic capital. State courts pay their judges and lawyers large salaries creating symbolic importance. In addition, the state courthouses are usually very large and imposing creating symbols of power and prestige; meanwhile, in the small communities of rural Alaska, the tribal courts are often convened in one of the village council meeting rooms by unpaid volunteer tribal judges. Bourdieu focused on power struggles between individuals or actors within a field. In this case, the power struggles between the tribal court and state court within the juridical field. DiMaggio and Powell focus on organizations that begin to resemble one another within a field despite the lack of effectiveness.

DiMaggio and Powell – Isomorphism in the Field

Over time, organizations within any given field begin to resemble one another in their services, even though copying one another may not be more efficient and perhaps even impractical for the needs of the community in which they serve. In the process, isomorphism or “sameness” of practice occurs when organizations begin to adopt the same forms and structures, even though differentiation may ensure survival. In this case, we are focused on the Anglo-American juridical and Indigenous tribal court fields. Using organizations as their unit of analysis, DiMaggio and Powell (1983) have suggested practical reasons why, over time, organizations that work closely begin to resemble one another. They argue that three separate processes: coercive, mimetic, and normative isomorphism, produce this result within any given field. DiMaggio and Powell (1983) describe the three processes or isomorphism as: (1) coercive isomorphism that stems from political influence and the problem of legitimacy; (2) memetic

isomorphism resulting from standard responses to uncertainty; and (3) normative isomorphism, associated with professionalization (p. 150).

Coercive process – who is making the rules?

A less prominent organization which often works within the same field with a more prominent organization often experiences pressures to conform (DiMaggio & Powell, 1983). “An example of coercive processes creating external pressures for compliance with institutional norms are found in government imposed regulatory environments” (Kondra & Hurst, 2009, p. 40). For example, the tribal court in Alaska is a less prominent organization within the larger juridical field. The larger system creates the language in the agreements for the tribal court to sign in order to receive referrals from the State agencies and courts. The organization creating the language for agreements is making the rules resulting in coercing other organizations to comply with the agreements. The larger field with the most resources often, and perhaps in good faith is often not aware that they are creating a hierarchy of power.

Mimetic processes – organizations looking and acting alike.

Organizations that are less powerful may try to look and act like the larger organizations within a larger and more powerful field. In Alaska, the tribal courts may adopt tribal codes that resemble those of the western legal field with judges and judicial processes that contain the western concept of punishment. The tribal court members may or may not know that they are following the western legal model because that is the type of training they are receiving from outsiders to their field. Unfortunately, the outside trainers may be conscious or, more likely, unconscious of their intentions to create systems that may not serve the rural communities.

Normative processes – pressures to conform to a larger organization.

Most larger organizations create professional norms within their fields, producing pressures for other less powerful organizations to conform. These pressures, for example, may extend from the Anglo-American legal field to create a powerful influence over other organizations such as the tribal courts. The people who are hired within the legal system are required to have certain levels of education. More often than not, an attorney may be hired over a layperson in a magistrate's position at a hub that services surrounding villages, because a law degree may carry more weight though it may not be as effective as a local layperson who knows the culture, families, values system, and local practices. In addition, the legal field often requires the tribal court judges to become trained in the Anglo-American legal system. The tribal court members may be pressured to conform by the federal government who funds their training.

On the other hand, a new field re-emerging and gaining momentum in Alaska is the Indigenous Knowledge field based on traditional knowledge and practices. It is evidenced through increased activity in the revitalization of songs, stories, dances, and languages. In the academic field, from preschool through university, traditional knowledge is becoming part of the curriculum, and the elders are receiving the recognition as the teachers and storytellers once again (Pingayak, 2011; Pranis et al., 2003). In Kake, the Circle Peacemaking practice is the return of traditional ways for resolving conflict and bringing back balance to broken relationships. Given that there is a revival of traditional knowledge, there is a possibility that local community-based initiatives in rural Alaska can succeed and be restored based on traditional principles.

Safety Zone Theory (SZT)

Safety Zone Theory (SZT) relates to federal Indian policy in the design of educational systems in United States. The same challenges relating to system change in the educational system apply to change within the criminal justice system in Alaska. SZT was developed by scholars K. Tsianina Lomawaima and Teresa L. McCarty to make sense of the fluctuation of government support and policy for Native students in the classroom. The government pendulum swung from assimilating the Native youth “rooted in the need to domesticate the most dangerous cultural difference” (2006, p. 43), to the American way of life by removing them from their parents in the 19th century, to one of supporting community-controlled schools on the reservations. After careful analysis of the policy change in a colonial institution, the question asked was this: why would a policy change so radically within a colonial context? The answer was about the government’s need to control both the classroom and what they termed “safe” in the classroom. After a time, the government decided the teaching of language, singing Native songs, and Native dancing was safe within the classroom. When the government creates safety zones, there is always an element of control.

Conclusion

Indigenous peoples of Alaska and worldwide have long practiced ways of resolving conflict in their communities, long before the first settler set foot on their lands. Circle Peacemaking based on local values and practice is locally designed by Kake residents in their efforts to reclaim their responsibility to their community and to revive traditional ways of resolving conflict together as a family and community. Elsewhere in rural Alaska, there are dispute resolution initiatives that have emerged with government funding. In my own experience, the Upper Tanana Wellness Committee started out as a local attempt to create a Restorative

Justice initiative for local underage drinking offenses. However, it did not fulfill its mission because of design difficulties. Kake Peacemakers embraced the principles and practice of Peacemaking they brought to the Circle. Field theory predicts the effectiveness of local design that depends on cultural and social capacity in the community.

Chapter 3: Methods

Introduction

This chapter reviews the methods of gathering data using Indigenous research principles and practices. The data I gathered came from the following sources: State of the Judiciary annual reports to the Alaska State Legislature, Alaska State Rules of Courts, interviews with Peacemakers and supporters in Yukon Territory, Canada and Kake, and finally, my observation of events in Kake. I interviewed Peacemaking practitioners in Yukon, Canada, the original members of the Healing Heart Council who designed Circle Peacemaking in Kake, and Peacemakers and supporters of the Circle process. In addition, I observed the community when walking around Kake and attending the celebrations.

This study is exploratory and identifies essential principles and practices used to design a sustainable restorative practice within the framework of Indigenous Planning and Dispute Systems Design. This chapter will cover the following topics: (a) Indigenous Methodology, (b) Indigenous Paradigms in Research, (c) Indigenous Epistemology, (d) Sources and Methods of Data Collection, (e) Data Collection: Interviews in Kake, Alaska and Yukon Territory, Canada, (f) Interview Methodology, (g) Qualitative Methodology, (h) Analysis strategy, and (i) Researcher's Use of the Results.

Indigenous Research Methodology

We are accountable to ourselves, the community, our environment or cosmos as a whole, and also to the idea or topics that we are researching. We have all of these relationships that we need to uphold. (Wilson, 2008, p. 106)

The Indigenous approach to research takes into consideration the importance of creating good and reciprocal relationships with the participants of the research community. Instead of being the main beneficiary of research within Indigenous communities, the relationships between

researcher and the community being researched should continue after the research is completed (Wilson, 2008). This includes the building of relationships of trust with the research participants and community, trust that should be important and ongoing. My research journey with Kake residents began in 2009, a few years before the formal research process. I was researching online for a sustainable community-based restorative practice process for Native people and found that Circle Peacemaking in Kake was the only community-based local initiative in Alaska. That very year at an annual statewide conference, I met Tlingit Kake Peacemaker and local State Magistrate Mike Jackson, who also serves as the Keeper of the Circle as I stated in Chapter 1. He and his wife hosted a table selling their jewelry and other products. A year later, at another conference, I met another Kake Peacemaker, Anthony Gastelum, a Native American who is a longtime resident of Kake. A year later, I visited Kake to meet further with both Mike and Anthony. At that time, Anthony worked as a Peacemaking Coordinator at OVK, and Mike was the State Court Magistrate Judge. I was able to observe them at work together in the courtroom as they talked about cases that could be referred to the Circle. On the same visit, I met several community members and got acquainted with the community. “Creating a relationship with the people is just as important as being the relationship – meaning that our identity to our research is connected to the land, our ancestors, and to the future generations who will come to being on the land” (Wilson, 2008, p. 80). In addition to building a relationship with community members in a community, there is what Wilson calls “relational accountability;” the research “has to benefit the community” (p. 102).

After my initial visit to Kake, I was given permission by Mike Jackson to return as a researcher. Upon my arrival, I met with both Mike Jackson and Anthony Gastelum. Because they were very involved with the Circle Peacemaking process, they were willing to guide me in my

research and offered a list of names of members of the original Healing Heart Circle and Peacemakers. My intention was to set up interviews. I asked Anthony to facilitate the meetings with the interview participants. It has been my experience that a local facilitator worked much better in gaining access to the research participants. Throughout the research journey, I remained in contact with the research participants by letters, phone calls, emails, and several visits to Kake for further research. I provided a research update to the tribal council in May, 2017.

Indigenous Paradigms in Research

Linda Tuhiwai Smith states “that Indigenous peoples have been, in many ways, oppressed by theory created by non-Indigenous scholars” (2012, p. 39). She refers to two paradigms of research at play here; the Western and the Indigenous research paradigm. Within the Western research paradigm, the history of colonialism is often left out and replaced with the “Indigenous problem” (p. 94), when, in fact, the problem is actually often a result of the effects of colonialism.

“[I]ndian problems” do not exist without taking into account the relationship between the White conquerors and the subjugated Indians. Virtually the whole apparatus of western civilization, including its vaunted legal edifice, has been used to exploit and degrade the rights and privilege of all Indian communities. (Gross, 2001, p. 3)

Another clear example of an Anglo-American approach to research is the definition and understanding of “science” as being the only truth, discovered by Western scientists. The Indigenous researcher defines “Indigenous knowledge” as coming to know or knowing. This knowledge is often taught through storytelling and observation. This can create a dilemma for the Indigenous approach to research. “The stories told by traditional people come out of their direct experiences and are ways of teaching that are very different from the simple imparting of facts” (Peat, 2005, p. 57). Indigenous ways of knowing is not a thing of the past for people who need “present day social policies,” (Nakata, 2008, p. 202). Indigenous knowledge is a present-

day guide in an ever-changing world. Martin Nakata, a Torres Strait islander and author of *Disciplining the Savages: Savaging the Disciples* (2008) counters previous notions of Indigenous Knowledge as static:

In describing Islander culture as an artifact of the past, Islander knowledge thinking, understanding and organization of their world – is itself viewed as something of the past. But in fact, it has always been something of the present, evolving and responding to all that is new and changing in Islander contexts. Islander consciousness and systems for thinking about, reflecting on and analyzing their place in unfolding events-Islander ‘history’ -while subjugated in Western accounts are nevertheless continuing. (p. 202)

Indigenous Epistemology

The English language is prolific with nouns to describe *chairs, pens, jails*, etc. In contrast, the Indigenous language contains action verbs such as *the thing you sit on, something you write with, or the place where you are locked up*, creating the reality as something that is not just a name, but is also a living and moving entity. Therefore, reality is not a thing, but a set of relationships (Wilson, 2008, p. 73). “Indigenous epistemology is our cultures, our worldviews, our times, our languages, our histories, our spiritualities and our places in the cosmos. Indigenous epistemology is our systems of knowledge in their context, or in relationship” (Wilson, p. 74).

A lot of our worldview is contained in our language without equivalent English descriptions. For example, the Navajos use the word “Hózhó” to describe “everything that the Navajo thinks of being good – that is, good as opposed to evil, favorable to man as opposed to unfavorable (Witherspoon, 2012, p. 23). As an outsider who does not speak Tlingit, this may create a language gap.

The inability to produce Tlingit terms and meanings in English, my spoken language, may inhibit a weakness in the research, as I may not grasp or be able to convey what the participants want to

describe in their interviews about Peacemaking Circles when they begin speaking about spirit. The Indigenous worldview contains spirit, which is not conveyed or possibly even considered valid in Western research. To the Indigenous person, spirit is seen in every living thing, an energy that connects everything. We are all related. This form of energy is recognized by Western science as metaphysics (Deloria, 2012). “We are replacing an outmoded metaphysics with a more modern and comprehensive one” (Deloria, 2012, p. 111); meaning that the old school of thought that includes evolution may not be the only school of thought in research as Indigenous knowledge grows to be a viable source of knowledge. In social relations, there is an order as in nature. Indigenous people knew that in order to survive, it was important to remain in good relations and harmony with all living beings, which included trees, people, animals, and water. This knowledge is still important to the Indigenous people of today.

Sources and Methods of Data Collection

The study is largely qualitative and includes extensive in-depth, semi-structured interviews and my observation of the community events in Kake. The participants interviewed were the original designers of Circle Peacemaking, Peacemakers, and supporters of the Circle process. My research includes evidence of the State of Alaska legal field’s acknowledgement and support of local community-based design. I note the State’s patterns supporting local processes that included tribal court. In addition, I reviewed State statutes and Rules of Court. The spotlight of this research focuses on the essential components required to design a sustainable dispute resolution process such as Circle Peacemaking in Kake. The methods of collecting data are as follows.

(1) Semi-Structured Interviews in Kake, Whitehorse, Yukon Territory, Canada, and a First Nation Reserve in Yukon Territory, Canada.

(2) Observation of community events in Kake, Alaska that supported community health and well-being.

(3) Supplemental Data:

- State of the Judiciary annual reports to the Alaska State Legislature regarding support and acknowledgement of local Indigenous rural initiatives.
- Alaska Rules of Court supporting local Indigenous rural dispute resolution initiatives.
- General legal research on case law and policy regarding Indian policy in Alaska as it relates to the distribution of authority and powers as they relate to sovereignty.
- My observation of Kake when attending public events.

As a researcher, I conducted the following research methodology:

2013 – I drove to the Yukon Territory in Canada to meet with Peacemakers. From Whitehorse, Yukon Territory, I drove to Skagway, Alaska to catch a small commuter aircraft to Juneau. From Juneau, I flew to Kake by way of another small commercial aircraft. In Kake, I met with Mike Jackson and Anthony Gastelum, OVK Tribal Youth Advocate, to ask questions about the Circle Peacemaking process and to create a working relationship with them and get acquainted with the community. I visited for two days.

2014 – I communicated with Mike Jackson by email with an attached letter to ask for permission to conduct the research in Kake. He gave me permission.

2014 – I traveled to Kake, Alaska in fall, 2014 by Alaska State Ferry to meet with Mike Jackson, Anthony Gastelum, and community members of the village in order to conduct interviews. I stayed for five days.

2015 – I returned to Kake in spring to visit the research participants to follow up on questions I had asked previously.

2016 – I met briefly with Mike in October 2016 while he and his wife were in Fairbanks. I gave him Chapter 1: the Introduction Chapter.

2017 – I visited Kake in May, 2017 to give an update on my dissertation and research to the research participants and tribal council. I stayed for seven days.

Data Collection– Interviews in Kake and Yukon Territory, Canada

I conducted 11 semi-structured interviews in the fall of 2014 that took about an hour each and returned in the spring of 2015 with follow-up questions. The participants were audio-recorded. One of the participants wished to remain anonymous, so I removed the name from the transcripts and used a pseudonym. The raw data was stored on my personal laptop, with backup copies on external hard-drives for committee chairs.

The interviewees were classified in four categories as follows:

- (1) Interviews with original members of the Healing Heart Council
- (2) Interviews with Peacemakers involved in Circle Peacemaking in Kake
- (3) Interviews with outside supporters of Circle Peacemaking, such as the local VPSO officer, the local school Superintendent, and community members
- (4) Interviews with Peacemakers in Yukon Territory, Canada.

Table 1. Profile of Interviewees

1. Yukon Territory	2. Kake	3. Kake	4. Kake
Peacemakers (2)	Original Healing Heart Council Members (2)	Peacemakers involved in Circle Peacemaking (4)	Circle Peacemaking Supporters (3)

Interview Methodology

Before I began to conduct the interviews in Kake, I hired Anthony Gastelum to serve as a local facilitator to assist me in gaining access to local people's homes and workplaces for the interviews. As an outsider and newcomer to Kake, I felt more comfortable with a facilitator for guidance, advice, and access to community members. It is my opinion that it is respectful to ask someone to introduce me to local people. I also depended on him for expediency because of my time limitation in Kake. Similarly, in my village, I had served as a facilitator for outside researchers and this service assisted them in expedient access to community members. My experience taught me that people are more likely to agree to an interview if a trusted local facilitator makes the initial contact with them. Mike Jackson initially referred Anthony Gastelum to serve as my facilitator. I trusted Anthony's guidance. Though he is not from Kake, Anthony has lived in Kake for a long time and is married to a woman from Kake. I felt that the interviewees trusted him when he contacted them and told them to expect my visit, which they did when I called. Anthony and Mike gave me names of local people to interview, which included original members of the Healing Heart Council, elders, the local Superintendent, and the Village Public Safety Officer (VPSO).

Qualitative Methodology

The qualitative researcher's goal is to better understand human behavior and experiences. The researcher seeks to grasp the processes by which people construct meaning and to describe what those meanings are (Bogdan & Bilken, 2007). To gather data in Canada and Kake, I conducted semi-structured interviews and allowed for the research participants to engage in open discussion. This led to research flexibility (Bogdan & Bilken, 2007). The people interviewed

were allowed to add to the discussion anything they chose to share outside the scope of the questions.

While the interviews allowed for more structure because of limited time, one challenge is that I may have missed several important discussions of topics participants could have offered if given more space to share their experiences.

Analysis Strategy – Goals and Objectives

Review of case law, statutes, rules of court, as well as judicial pronouncements reveals a legal environment and juridical field that has not, until within the last few years, promoted local design of restorative practices. Beginning with Public Law 83-280, as well as the 1971 Alaska Native Land Claims Act (ANSCA) and case law associated with it, the research will demonstrate that Alaska tribal courts have, on a strict legal basis, been restricted in attempts to exercise local authority over criminal matters occurring within their respective communities. In the past few years, there has been growing interest in creating agreements between tribes and state courts and agencies. A few tribes have already signed agreements with these parties.

On a more encouraging note, the findings demonstrate, through the examination of the Peacemaking Circle in Kake, that Native communities do not have to wait for legislative or judicial permission or encouragement to implement local restorative practices if they have the interest and human resources within their community to do so. An in-depth analysis of the interviews showed how this is possible.

Researcher's Use of the Results

The researcher will use the results in the following ways:

(1) Publish the results in a scholarly journal and make presentations at academic conferences.

(2) Offer this information to my home communities of Northway and Tanana and to other tribes in Alaska.

(3) Transcribe the interviews and return them to Kake.

Conclusion

While the researcher acknowledges that she is undertaking an idiographic rather than a nomothetic approach, the Tlingit Peacemaking practice in Kake, Alaska stands out as a model that can inform other Native communities of the action steps they can take in order to implement a successful, sustainable Restorative Justice program. Acknowledging that conducting semi-structured interviews has its limitations, this study concludes that while every Native tribe has its own unique traditions and practices, it is nevertheless possible to view the Tlingit Peacemaking program in Kake as a success story of a community-based design based on Tlingit values. The current study answers the question as to why and how this Peacemaking program has worked so well, despite its emergence in an otherwise largely dysfunctional and external legal environment.

Chapter 4: Results

Introduction

The data gathered is from the following four sources: (a) the annual State of the Judiciary reports (provided by the Chief Justices of the Alaska State Court to the Alaska State Legislature), (b) the Alaska State Rules of Court supporting local design of Restorative Justice initiatives in rural Alaska, (c) interviews with Peacemakers and supporters in Kake and Yukon Territory, Canada, and (d) my observations of community events while visiting the community of Kake.

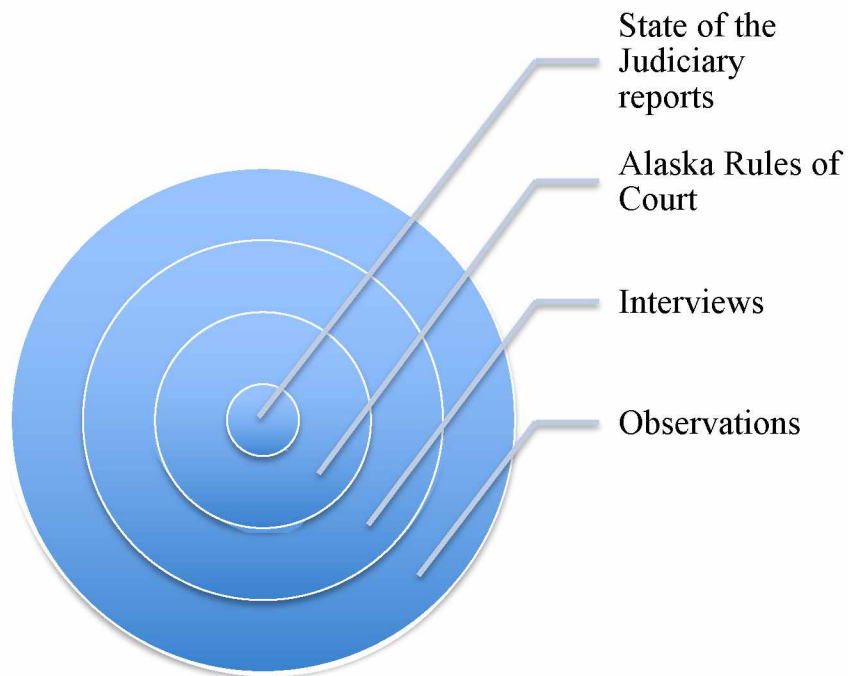


Figure 6. Results from Four Sources

This results chapter begins with the themes gathered from the four sources.

The State of The Judiciary Reports: 1972-2016 (44 years)

The Alaska Judicial System is a centralized system that is funded by the Alaska State Legislature. The state governor appoints the Chief Justice of the Alaska Supreme Court to preside over the court system. Because there is interest in maintaining a relationship with the State Legislature (who are the main funders of the Court), the Chief Justice provides to the legislature an annual report, “The State of the Judiciary”. The Chief Justice serves as spokesman for the judicial system and provides updates on the progress, challenges, and needs of the courts in urban and rural Alaska. I may refer to The State of the Judiciary reports as simply “reports” hereafter.*

The reports provide insight into the workings of the highest court of the land as it contains information that relates to meeting the needs of the constituents, which include victims, communities, and defendants. Alaska Native people are, by far, the largest population in the criminal justice system, despite, as I mentioned in Chapter 2, not being the largest racial group in Alaska (approximately 15% of the State’s population). Indigenous people categorized as Alaska Natives/North American Indians make up nearly 35% of corrections facilities occupants in Alaska (Alaska Department of Corrections, 2016).

In my review of nearly five decades of the state Judiciary Reports, I asked the question, “Did the Chief Justices support the design of local community-based restorative practices in rural Alaska?” Throughout the years, I noted fluctuating patterns of support for community-based dispute resolution initiatives in rural Alaska. Because Circle Peacemaking was a very effective restorative practice initiative in Kake, I anticipated Chief Justice references to it when this initiative began its practice in 1999. I also searched for their support for tribal courts, despite all the litigation for jurisdiction over the years.

* As a note to the reader - the State of the Judiciary report began to appear in hard copy in 1972.

Lastly in my research, I note the Chief Justice references Alternative Dispute Resolution (ADR) such as mediation, negotiation, arbitration, and Restorative Justice used as alternatives to litigation in the court system. ADR became a mainstay to courts since the 1970s. Therapeutic Jurisprudence, or TJ, is a relatively new process in the court system and had its beginnings as a more compassionate form of care for mentally ill defendants. The terminology that best describes TJ is the study of how legal systems affect the emotions and mental health of people. In many parts of the world, TJ has influenced the development of what is known today as “problem solving” courts, such as drug-courts, mental health courts, and alcohol courts to name a few. These courts work in teams addressing the defendant’s specific problems. The following list contains some words and phrases that guided me as I read through the reports. I looked for terminology that indicated a shift from the centralized to more decentralized system. If I found the terminology, I reviewed them for references to local design in rural Alaska. The terminology of decentralized words or terms is in Table 2, and Table 3 shows my analysis of State Judiciary Reports for Chief Justice support of local peacemaking efforts.

Table 2. Decentralized and Centralized Terminology

<u>Decentralized words or terms</u>
rural Alaska
dispute resolution
alternative Dispute Resolution or ADR
tribal courts
working relationships
partnerships
Restorative Justice or Restorative practice
Kake Circle Peacemaking
Magistrate Mike Jackson
local design
community design
<u>Centralized terminology</u>
building more courthouses in rural Alaska
request of further funding for more magistrates to serve rural Alaska

Table 3. State of the Judiciary Annual Reports that Contain Chief Justice Support for Local Design of Peacemaking in Rural Alaska, ADR, TJ and RJ, and Collaboration of Services

Year	Column 1 Chief Justice Support for Community-Based dispute resolution initiatives in rural Alaska	Column 2 Chief Justice support for Kake Circle Peace-making	Column 3 Chief Justice Support for Tribal Court	Column 4 Chief Justice support for Alternative Dispute Resolution (ADR), Therapeutic Jurisprudence (TJ) Courts or Problem Solving Courts, and Restorative Justice (RJ)	Column 5 Chief Justice support for Collaboration of cases between State Courts and Tribal Courts
1972-76	XX				
1977-81	X			X	
1982-86					
1987-91			X	XX	
1992-96	XXX		XX		
1997-01	XX	X		XXXXXXXX	
2002-06	XXX	X		XXXXX	
2007-11				XXXX	
2012-16	XXXXXXXXXX XXXX	X	XXXXXXXX XXXX	XXXX	XXXXXXXX XXX XXXXXXXX XX

For the first two years, beginning in 1972, the annual reports reflect Chief Justice Boney's mention of the alcohol problem among Native peoples of Alaska in urban Alaska and

makes reference to the high arrest rates of the Native people of Alaska as a “great problem” (p. 18). He states that 99% of the arrests are for alcohol related offenses, such as drunk driving, being drunk in public, and “a host of violent crimes” (p. 18). He also notes that it is a problem for all Natives in Alaska. “This is a great problem in Bush Alaska. Also, it is equally a problem for Native people who have not been fully assimilated into the so-called dominant culture in our metropolitan areas” (1972, p. 18).

Not only does Boney report that alcohol is a problem for Natives in urban Alaska, he also mentions the lack of facilities for young offenders in rural Alaska. Judge Boney categorizes the rehabilitation institutions for juveniles as being “crude facilities” in the rural areas (p. 23). In 1975, it appears that the administration began designing dispute resolution efforts in several rural communities in Alaska when the reports introduce the Village Conciliation Boards and Elders Courts. For a few years, the reports contained updates on this effort.

Column 1: Chief Justice Support for Community-Based dispute resolution initiatives in rural Alaska
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Theme 1 – The Chief Justices throughout the years support community-based dispute resolution processes such as “Village Conciliation Boards” and “Elders Courts” in rural Alaska.

In 1975, the Judiciary reports included some action taken to address the crimes in rural Alaska with their design of Village Conciliation Boards in several remote Alaskan villages. Chief Justice Jay A. Rabinowitz (1975) states that “their performance will be studied” (p. 15). The following year, Chief Justice Robert Boochever (1976) calls the Village Conciliation Boards “exciting new projects” (p. 14) that have been established in “several villages in an attempt to

utilize traditional means of resolving disputes” (p. 15). In 1977, Chief Justice Robert Boochever again mentions the development of the Village Conciliation Boards. He states:

An effort is being made to resolve disputes in a manner approximating the traditional pattern. Respected members of the community endeavor to settle conflicts before they develop to the point at which full court procedures are required. The conciliation program is being evaluated at this time, and we will know better by June of this year whether the model should be expanded or the effort abandoned. (p. 5).

However, this is the last mention of the further development of the Village Conciliation Boards in all the following reports. Two decades later, in 1992, there is again a mention of locally designed dispute resolution Initiatives.

In 1992, Chief Justice Rabinowitz speaks of a “dispute resolution mechanism” in Barrow, an Inupiat community located above the Arctic Circle (p. 5). This was the resurgence of the Village Conciliation board efforts. In 1993, Chief Justice Moore reports that the study on the viability of the Village Conciliation boards was completed and included the conciliation program in Barrow. He cited a study of two tribal courts and an organization in Alaska which “[p]rovided a much-needed alternative methods of resolving disputes in their areas” (Moore, 1993, p. 13).

In 1994, Chief Justice Daniel A. Moore Jr. reports increased interest from rural residents to resolve disputes locally in “alternative and frequently more informal settings” (p. 6). He supports this interest and suggests the cost-savings for the State of Alaska. He states: “Local forums for dispute resolution, if carefully structured and managed, can offer all participants ready access to due process. The forums help individuals and also provide welcome assistance to the burdened state systems” (p. 6).

Five years later in 1999, Chief Justice Warren Matthews mentions two other rural-based dispute resolution programs: namely, the Barrow Elders-Court, “run by the Native Village of Barrow and meets regularly in the State Court Building” (Matthews, 1999, p. 19), and the Togiak

Elder's Court created to "monitor compliance with whatever sentence have been imposed" (p. 18). He says, "It is the view of the court system that juvenile diversion programs are highly useful...the court is in total accord with this" (p. 18). Matthews adds, "We encourage their widespread establishment and commend all those who have initiated those programs that presently exist" (p. 19). After the 1999 report, the State of the Judiciary reports are silent on the progress of the two programs.

In 2001, the reports contain information of Youth Courts established by the State in several communities and villages around Alaska, including Tetlin, Craig, Klawock, Nome, Shishmaref, Wrangell, and Tok. In 2002, Chief Justice Dana Fabe advocates for Family Group Conferencing. "These mediations have been able to address details for ongoing contact between children and their biological families, tribes and culture" (Fabe, 2002, p. 9).

Theme 2_– From 2013-2016, The chief Justice offers strong encouragement for community-based designed initiatives in rural Alaska.

The most encouragement for community-based designed initiatives relates from Chief Justice Dana Fabe. In her 2013 Judiciary report, she refers to local community-based design in rural Alaska seven times. She begins by stating distance delivery justice is problematic for rural Alaskans who live far from the courthouse. Fabe states, "Quite simply, for courts to effectively serve the needs of rural residents, justice cannot be something delivered in a far-off court by strangers, but something in which local people – those most intimately affected – can be directly and meaningfully involved" (p. 8). She recalls Chief Justice Rabinowitz's commitment to justice in rural Alaska 20 years earlier. She adds:

I stand also with a heavy heart for all that we have not yet accomplished, for suffering that is not yet abated, and for realities of village life that still "cry out" for meaningful solutions over two decades after Chief Justice Rabinowitz's poignant words (Fabe, 2013, p. 8).

Not only does Fabe encourage more local design at the community level, she also suggests some design initiatives such as (a) the creation of an advisory sentencing board, (b) circle sentencing, (c) an Elder's council, (d) a community diversion panel, and (e) local justice methods. She defines the role of the Advisory Sentencing Board process that occurs when the Magistrate-Judge refers a case to the Advisory Sentencing Board for their recommendation before sentencing the defendant. This is a unique process because the judge and attorneys travel to the villages to hold court as was the practice of earlier rural judges according to Chief Justice Fabe. Whatever form they take, sentencings in villages allow state justice officials to work more closely with local communities to adopt village-centered solutions to village-centered problems (2013, p. 10). She recalls former judges such as Judge Arlene Clay, who resided in Aniak, a remote village. "Before she sentenced defendants, she made sure the elders or village council were asked for input" (p. 9). She quoted the late Judge Nora Quinn, the First Yupik Judge in Alaska, who said, "If you aren't going to help him, nobody else is going to really try to help him because we don't know how to help him" (p. 9). "While judges make the final decisions in these cases, many believe that the sentences have more local acceptance because the community is included in the process" (p. 10). In addition to added attention to the Advisory Sentencing Board, Chief Justice Fabe mentions the training on circle sentencing:

Shortly after my term as chief justice commenced last year, the court system and tribal justice groups sponsored joint training on circle sentencing that included both state and tribal judges and provided a valuable opportunity for us to learn from each other. (Fabe, 2013, p. 11)

She states, "[We] have continued to work closely with the Alaska Native community to foster more collaborative, community-based mechanisms of justice" (Fabe, 2013, p. 12).

By partnering with rural communities to facilitate and support more localized, community-based problem-solving, we can create outcomes that are not only better suited to the realities of rural life, but more lasting and cost-effective (Fabe, 2013, p. 9).

Chief Justice Dana Fabe mentions the importance of community-based programs in rural Alaska as a tool to better serve the needs of the residents. She adds:

As hard as we may try in the state justice system, and as dedicated as we may be, solutions we impose from afar will continue to miss the mark if they fail to take local resources, knowledge, wisdom, and guidance into account (Fabe, 2013, p. 15).

Column 2: Chief Justice office support for Kake Circle Peacemaking
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Theme 3 – The State of the Judiciary has offered supporting comments regarding the Kake Circle Peacemaking three times since it began practice in 1999.

The Chief Justices mentioned Circle Peacemaking in Kake three times in 17 years. One year after the Circle Peacemaking in Kake began practice in 1999, Chief Justice Warren W. Matthews (2000) mentions it as a Restorative Justice initiative in his report. It is called at that time “Sentencing Circle” (p. 22). He says:

In Alaska, one adaptation of Restorative Justice is the use of sentencing circles. These have been used most systematically by Mike Jackson, our Magistrate in Kake. He convenes sentencing circles that use Restorative Justice principles, and local customs and traditions. He has conducted 20 circles to date (p. 22).

In 2004, Chief Justice Alex Bryner mentions Magistrate Mike Jackson and his work with the Youth Peacemaking Circle in Kake. “His community saw a drastic reduction in repeat offenses by youth” (p.13). The last mention of Circle Peacemaking in the report is when Chief Justice Dana Fabe mentions the Circle Peacemaking in Kake in 2013. She again mentions Magistrate Mike Jackson in Kake. She says, “Magistrate Judge Mike Jackson of Kake, an Alaska Native of Tlingit and Haida ancestry, has facilitated local sentencing circles in his community for many years” (Fabe, 2013, p. 10).

Theme 4 – In 44 years, the reports change to support for tribal court jurisdiction.

The first mention of tribal courts happened in 1987, when Chief Justice Jay Rabinowitz stated to the State Legislative body, “Although you may not have much to do with it, tribal sovereignty is another [issue]. These are great themes that are presently occupying our time and our thoughts in Alaska” (Rabinowitz, 1987, p. 4).

In 1992, Chief Justice Jay Rabinowitz mentions the high suicide rates among Alaska Natives and other social problems, such as high rates of school dropout and drug and alcohol abuse. He mentions the study of the use of ADR in tribal courts, particularly in the communities of Sitka, Minto, and Barrow. He states that “we don’t have the final answer on the complex issue of sovereignty” (p. 5). He also said, “After years, a decade of litigation, it’s more confused than ever, it’s more divisive than ever and that the solution, if there is going to be a solution it is not through litigation in the court,” (p. 5). He suggests the solution to tribal sovereignty lies with the United States congress. He says:

And you know, the concept of Indian Country, recognition of a tribe, what constitutes a tribe, and its whole different area of jurisprudence that is very difficult and the solution lies with what I think our congressional delegation and with Congress to this problem (Rabinowitz, 1992, p. 4).

The Chief Justice reports are silent regarding tribal court role, place and jurisdiction until 20 years later, when Chief Justice Dana Fabe revives the topic again in her 2013 report, where she mentions tribal court seven times. She states, “A second trend that holds promise for improving access to justice in remote villages is the growing role of tribal courts in resolving a range of local justice issues” (p. 10). She writes state and federal statutes and court rules already authorize the tribal court’s authority for Child in Need of Assistance (CINA) cases when children are

removed from their homes. “State and federal statutes and court rules already authorize state courts to enlist the assistance of local organizations such as tribal courts ...when seeking to resolve certain types of case[s]” (p. 11). Fabe states that tribal courts are already intervening in “minor problems” (p. 12), which left unnoticed would “have a degrading impact on a community’s sense of security and well-being” (Fabe, 2013, p. 12). She adds that early intervention in many “isolated villages” (p. 13) are better served by tribal courts than by State courts that often are miles away. Not only are tribal courts nearby but the tribal judges hold cultural capital not offered by outside judges. She states:

Tribal courts bring not only local knowledge, cultural sensitivity, and expertise to the table, but also valuable resources, experience, and a high level of local trust. They exist in at least half the villages of our state and stand ready, willing, and able to take part in local justice delivery (p. 13).

She shares a story about a teen brought to tribal court on a Minor Consuming Alcohol charge in Sitka. The court has a division called the Tribal Youth Diversion Effort. “The tribal judges decided he needed a role model who could help him focus his energy in more positive ways” (p. 9). She reminds the legislature about the status of the tribes. She states, “As you know, the existence of tribes or tribal courts in Alaska is a question of federal – not state – law, and for two decades the federal government has recognized Alaska Native tribes” (2013, p. 10). Chief Justice Fabe even mentions an effort to produce a Tribal Court Directory, “In addition, we are fortunate that Alaska Legal Services Corporation has recently completed the 2012 Alaska Tribal Court Directory, which lists ninety tribal courts across the state and types of cases they handle (2013, p. 120).

Fabe notes that nationwide, the Federal and State Chief Justices across the country are encouraged to increase communication and collaboration with tribal courts:

The national Conference of Chief Justices has long urged increased communication and collaboration with tribal courts across the country and the reduction of jurisdictional conflicts between federal, state, and tribal courts. Most recently, in 2011, the organization endorsed a resolution encouraging greater information sharing between federal, state, and tribal courts to better protect Native children. Today, I'm pleased to report that in Alaska we are making some progress toward addressing these concerns. (2013, p.11)

After an encouraging report on the status and efforts of the tribal courts, Fabe ends on a note about the challenges facing delivery from an outside justice system to the tribes in rural Alaska.

She ends her report stating the challenges:

Yet despite these and other opportunities for tribal court or elder council involvement, cooperation and coordination are often hampered by the same factors that have always posed a challenge for rural justice delivery: geographic distance, isolation, and cultural and language differences, among others. (2013, p. 11)

Column 4: Support for Alternative Dispute Resolution (ADR) processes such as mediation and Therapeutic Jurisprudence (TJ) or Problem-Solving Courts and Restorative Justice (RJ)

Theme 5 – The Chief Justice reports support Alternative Dispute Resolution (ADR) and Therapeutic Jurisprudence (TJ) or Problem Solving Courts, and Restorative Justice (RJ), mostly in urban Alaska and Native hubs serving smaller communities.

The Chief Justices mention dispute resolution systems familiar to them such as Alternative Dispute Resolution (ADR), Therapeutic Jurisprudence (TJ or Problem-Solving Courts), and Restorative Justice (RJ) 23 times over the 44 years. They mention ADR 11 times, TJ 9 times, and RJ 3 times.

ADR is mentioned 11 times as a cost-effective method in regards to litigation. Beginning in 1977, Chief Justice Robert Boochever proposes arbitration and mediation as “diversion methods to costly litigation” (p. 19) and suggests the need for “outside expert advice” (p. 19) for further investigation to alternatives to litigation. According to Boochever, “It is our hope that some nationally recognized experts will work with selected Alaskans to review our present

practices and look to the fundamental requirements for adjudicating various types of disputes” (1977, p. 19).

However, change doesn’t happen quickly in the judicial system. Thirteen years later, in 1990, Chief Justice Jay Rabinowitz mentions an “appointed task force for studying the benefits of mediation” (Rabinowitz, 1990, p. 5), beginning with pilot projects in Anchorage and Fairbanks (two urban cities) for family mediation. In 1991, he mentions a pilot mediation project for child visitation disputes. In every annual report consecutively for six years beginning in 1998 – 2003, there are reports of mediation for (a) cases involving children removed from homes, (b) juvenile mediation programs, (c) minor offenses, (d) small claims courts, (e) family law cases, and (f) arbitration for private cases. In his 1999 report Chief Justice Warren W. Matthews writes, “The court is in total accord with this and I can report progress” (p. 13).

Support for Therapeutic Courts

Beginning in 2000, there are nine references of Therapeutic Courts (Problem-Solving Courts). For four years from 2000-2003, the reports support TJ Courts in urban areas and Bethel, a Yupik hub city in Western Alaska with a population of over 6000 residents (U.S. Census, 2013). In his 2000 report, Chief Justice Warren W. Matthews claims the courts are encouraging therapeutic court and restorative practice, “Thus, therapeutic courts are labor intensive and expensive. But advocates say the added costs are much less, viewed overall, than the costs of recidivism experienced in the present system” (Matthews, 2000, p. 20).

In 2006, the Judiciary reports mention the Therapeutic Courts in Alaska as progress for the court system. In her 2007 report, Chief Justice Fabe states, “As many of you know, one new approach to the problem of substance abuse and criminal behavior is the Therapeutic Court model” (Fabe, 2007, p. 4). She again supports the successful outcomes of Therapeutic Courts in

her 2008, 2009, 2013, and 2014 reports. In her 2008 report she makes reference to TJ courts in courts serving rural Alaska.

Support for Restorative Justice

In his 2000 report, the Chief Justice supports juvenile mediation programs in Anchorage based on principles of Restorative Justice. In 2011, the Chief Justice Carpeneti mentions the State of Texas's success with Restorative Justice reforms. He states:

[Texas] Rep. Madden is widely credited with inspiring recent reforms in the Texas correctional system that led to both dramatic decreases in the prison population and the lowest crime rate Texas has enjoyed in over two decades" (Carpeneti, 2011, p. 7).

Column 5: Chief Justice support for State/Tribal Courts collaboration

Theme 6 – The recent reports from 2013-2016 encourages increased State/Tribal Court collaboration of cases.

In her 2013-2015 State of The Judiciary reports, Chief Justice Dana Fabe mentions and supports collaboration efforts between State Courts and Native people of rural Alaska. She advocates for increased State and Tribal Court relationships and the development of dispute resolution programs in the rural region. In her 2013 report, Chief Justice Dana Fabe stresses the importance of State Court collaboration with tribal courts.

By diverting Minor Consuming Alcohol cases to local tribal courts where appropriate, we expand the level of resources available to address the problem, integrate local wisdom and cultural norms into the problem-solving process, build stronger foundations for justice delivery in rural areas, and – most importantly – allow youth to be guided and held accountable by those who know them best and who care most about their success (Fabe, 2013, p. 14).

Chief Justice Dana Fabe reviews state and federal statutes that are in place to allow for diversion to tribal courts. She reminds the Legislature of Justice Jay Rabinowitz of his 1992 State of the Judiciary Address, "that there was still much progress to be made in Alaska Native communities" (p. 7). She proceeds to say:

So, while I stand before you today – yet another twenty years later – with gratitude for all that we have accomplished together for our rural communities, I stand also with a heavy heart for all that we have not yet accomplished, for suffering that is not yet abated, and for realities of village life that still “cry out” for meaningful solutions over two decades after Chief Justice Rabinowitz’s poignant words (Fabe, 2013, p. 8).

While Chief Justice Dana Fabe mentions the importance of community-based programs in rural Alaska, she mentions that it will be cost-saving to the State; “When Alaska Native children make up over half of our children in need of aid, we are paying the costs. Alaska’s Native people are our first people, and they have rich histories, strong traditions, and vibrant cultures” (2013, p. 14). The following two years Supreme Court judge Dana Fabe states that she invited both Tribal and State Court judges together to begin coordination of cases. “This past fall, I invited tribal court judges to join state court judges so that we could learn together from a national expert about new techniques for handling cases involving self-represented litigants” (Fabe, 2014, p. 13).

Fabe mentions the development of local dispute resolution initiatives as a separate process and the State and tribal courts working together on cases. “[I]f there is any place where adequate justice delivery demands our keen attention and creativity, it is rural Alaska” (2014, p. 14). She shares that the State judges will be “coordinating more closely with tribal courts” (p. 13), and “[i]ncreased collaboration between state and tribal judges is already occurring” (p. 14). In her 2015 report Fabe writes, “many tribes stand ready and able to play a role in local community diversion panels” (p. 14). She lists examples of what the court sees as collaboration with tribal courts and State courts:

In fact, the greatest breakthroughs often happen when we stop to reassess our interactions with others and replace patterns of distrust and detachment with shared hopes for conciliation and cooperation.... It took a long time, but the results will be worth it if we begin to see more of the outcomes we hope for: localized, culturally appropriate, and effective solutions to the persistent problems our rural communities face. (Fabe, 2015, p. 12)

Alaska Rules of Court Themes Supporting Local Rural-Based Design

The Alaska Rules of Court, established by the Alaska Supreme Court, are the rules for (a) practice and procedure in civil law, (b) criminal law, (c) juvenile delinquency, (d) minor offenses, (e) child's matter, (f) probate law, and (g) appeals. The Alaska Rules of Court listed are Alaska Rules of Criminal Procedure that address (a) all criminal proceedings, (b) delinquency rules that pertain to youth under the age of 18 who violate a criminal or municipal law, (c) rules of civil procedure that address all actions and proceedings of a civil nature such as conflicts between people or institutions such as businesses, and (d) minor offenses that address mostly misdemeanors.

Table 4. Alaska Rules of Court That Allow for Referrals to a Community-Based Restorative Justice Program or Transfer to Another Court.

Rules of Court	Year			
	2002	2011	2013	2014
Criminal				Rule (11) (i)
Delinquency		23(1)		21(d)(3) & 23(f)
Civil	100(i)			
Minor			13(a)(b)	

Theme 1: State Court Referral to tribal court, elders' court and other ethnic organizations for civil cases was put into effect in 2002 creating a climate of change for support of community-based dispute resolution processes.

2002

Rules of Civil Procedure Rule 100(i) Mediation and Other Forms of Alternative Dispute Resolution.

(SCO 1469, Effective October 15, 2002)

Rule 100 Mediation and Other Forms of Alternative Dispute Resolution. (a) Application. At any

time after a complaint is filed, a party may file a motion with the court requesting mediation for the purpose of achieving a mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. If domestic violence has occurred between the parties and mediation is requested in a matter covered by AS 25, mediation may only be ordered when permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered by AS 25, the court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court shall consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered.

Rule 100 (i) Other Forms of Alternative Dispute Resolution

(1) Early Neutral Evaluation.

(2) Arbitration.

(3) Settlement Conference.

(4) Local Dispute Resolution: Parties may agree to resolve disputes, subject

to court approval, by referring them to tribal courts, tribal councils, elders' courts,

or ethnic organizations.

Theme 2: For three years, from 2011-2014, the Supreme Court issued Rules of Court procedures for increased referrals to mediation and Restorative Justice programs in rural Alaska at the agreement of all parties for juvenile, criminal and minor offenses.

2011

Delinquency Rule 23.1. Dispute Resolution for Restitution.

SCO 1751 effective October 14, 2011

In accordance with AS 47.12.120(b), the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any restitution dispute between the minor and any person entitled to restitution as to the amount or manner of payment of restitution.

AS 47.12.450. Community Dispute Resolution Centers for Matters Involving Minors, (a) An entity organized for the purpose of providing community mediation services may establish and operate a community dispute resolution center to resolve disputes between minors who are alleged to have committed offenses and the victims of those offenses.

2013

Alaska Rules of Minor Offense Procedures Rule 13 (a)(b) Temporary Transfer of Minor Offense Cases

Rescinded and readopted by SCO 1794 effective April 15, 2013; renamed and renumbered by SCO 1797 effective April 15, 2013

(a) For purposes of this rule, the term “original court” means the court in which a minor offense case is pending. The term “second court” means the court to which the defendant requests that the case be temporarily transferred.

(b) A minor offense case may be temporarily transferred from the original court to a second court for purposes of arraignment under the circumstances described below:

(1) If there is a mandatory court appearance for the minor offense, the defendant may request a temporary transfer from the original court to the court nearest the place where the defendant resides or is employed; or

(2) If a warrant relating to the minor offense is outstanding, the defendant may request a temporary transfer from the original court to the nearest court; or

(3) If the defendant is arrested on a bench warrant relating to the minor offense, the defendant may request a temporary transfer from the original court to the court where the defendant was arrested.

2014

Alaska Rules of Criminal Procedure Rule 11 (i)

Adopted April 15, 2014

(i) Restorative Justice Programs Alaska Rules of Criminal Procedure 11(i) referral to a Restorative Justice program as part of the sentencing process.

(1) With the consent of the victim(s), the prosecutor, and the defendant(s), the judge may refer a case to a Restorative Justice program. The parties must inform the Restorative Justice program about any applicable mandatory sentencing provisions at the time the matter is submitted to the program. The parties may propose to the court the sentence recommended by the participants in proceedings convened by that program.

(2) The parties may include the recommendations of the Restorative Justice program in a sentencing agreement subject to the provisions of subsection (e).

(3) The term “Restorative Justice program” means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative Justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term “Restorative Justice program” does not include the Alaska Court System’s therapeutic courts.

2014

Delinquency Rule 21 (d) (3) Adjudication Hearing
SCO 1816 effective April 15, 2014

(d) Judgment

(3) A minor may, with the consent of the Department and the victim(s), condition an admission to one or more acts alleged in the petition upon the court's agreement to the recommendations made by a restorative justice program to which the matter is referred pursuant to Delinquency Rule 23(f).

Delinquency Rule 23(f) Restorative Justice Programs
Effective April 15, 2014

(1) With the consent of the victim(s), the Department and the juvenile may stipulate to a stay of disposition pending a referral of the matter to a Restorative Justice program. The parties must inform the Restorative Justice program about any applicable mandatory disposition provisions at the time the matter is submitted to the program.

(2) The court shall give due consideration to the recommendations made pursuant to a referral authorized by paragraph (1).

(3) The term "Restorative Justice program" means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative Justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term "restorative justice program" does not include the Alaska Court System's therapeutic courts.

Results from Interviews in Yukon Territory, Canada and Kake, Alaska

Interview Questions
Research Project: Circle Peacemaking Researcher: Polly E. Hyslop Researcher script: Ts'en'ii (thank you very much) for participating in this study. Do you have any questions before we begin? We will be audio-recording this interview and you may ask to stop or pause the recording at any time.
1. Why do you think that circle Peacemaking has been sustainable and functioning? 2. Why do you support/prefer circle Peacemaking over state court? 3. What type of leaders do you look for in circle Peacemaking? 4. Why are traditional values and teachings important in circle Peacemaking? 5. What was it like in the beginning to design circle Peacemaking? Did you experience resistance from within? Did you experience resistance from outside Kake? Explain. 6. What advice would you give to other designers of circle Peacemaking in other Native communities? 7. Do you have any advice for the following generations that will take over leadership regarding the circle Peacemaking? 8. What do you think have been the challenges to circle Peacemaking process and what do you suggest would help to improve the process? 9. Is there anything you would like to add on this topic?

Figure 7. List of Semi-Structured Interview Questions Used by Researcher

I found several themes that emerged from the interviewees' answers to the semi-structured questions and what they offered outside the questions. I have noticed from my past experience in interviewing elders and Native people that the interviewees will inject a theme important to them, one that I have not addressed in my questions. I made note of those themes as well. What resonated are two separate but intertwining categories of Peacemaking design. The first design, and one that caught me by surprise, is the actual practice of Peacemaking as a way of life outside the Circle practice. The other, though closely intertwined, is the actual design of the Circle Peacemaking practice in Kake.

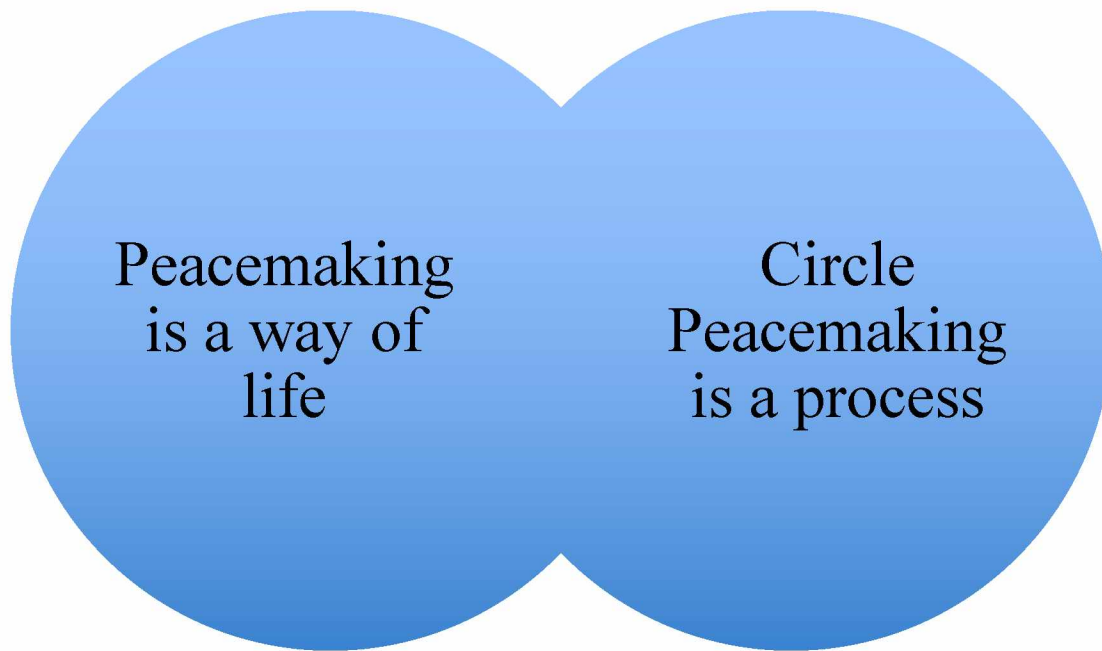


Figure 8. Peacemaking as Both a Way of Life and as a Process

Peacemaking can be seen as a way of life because it is a way to maintain good relations with one another in a community. This is important when a community designs a Peacemaking Circle. The Circle is made strong by the community members who share their way of maintaining good relations through values and actions. The Peacemaking Circle cannot thrive without the participants who share the way of maintaining good relations and repairing broken ones. Peacemaking as a way of life and a circle process are blended by the health of the community. Not all communities are ready to design peacemaking as a dispute resolution process.

Several overlapping themes emerged from the interviews. In this chapter, the themes focus on three areas of Peacemaking. They are: (1) Peacemaking as a way of life, (2) the elements of design of a Circle Peacemaking in Kake, and, (3) resistance to local design of Circle Peacemaking. This chapter focuses on the following three groups and six themes

Table 5. Emergent Groups and Themes

Group 1: Peacemaking is a Way of life.

Theme 1: Community volunteers are the #1 reason for Peacemaking sustainability in Kake.

Group 2: Indigenous Leadership in the design of Peacemaking Circle in Kake

Theme 2: Peacemakers in the Circle process are supportive and non-judgmental.

Theme 3: Traditional values and teachings are important to the Circle process because it strengthens and maintains Tlingit identity.

Theme 4: The principles and Practices of Circle Peacemaking are locally designed in Kake.

Group 3: Resistance to local Circle Peacemaking design

Theme 5: The designers initially faced resistance from local leadership but chose to continue holding circles and invited the resisters.

Theme 6: The single-most significant challenge facing the Circle Peacemaking process is buy-in from professionals.

Group 1: Peacemaking is a way of life

Theme 1: Community volunteers are the #1 reason for Peacemaking sustainability in Kake.

The number one reason the Circle Peacemaking process has remained sustainable and functioning is because the circle is comprised of good, caring community volunteers who are willing to participate in the circle (C1, 2014; Gastelum, 2014; Jackson, 2014; Jackson, 2016; Kadake, E. 2014; Kadake, EW, 2014). This type of volunteer leadership contrasts with the current view of leaders often seen as persons of authority, such as a president, manager or director of some organizations. Mike Jackson considers his leadership as being a “responsible person” in his community (Jackson, 2014). Another Peacemaker in Kake states that Peacemaking works when helping out one another. “Volunteers have to be committed. Be there to help out.

Never say “no.” It’s awesome. You know it’s going to work. Just help out each other to keep it working” (Aceveda, 2014).

The community Peacemakers are often the volunteers who are helpful in the community events and responsive to the needs of community members. They do not wait to be asked to be helpful when help is needed. Reach out and help. Don’t ask “Do you need help” (Gastelum, 2014), when you see community members needing help. “Just help them” (Jackson, 2014). Peacemakers are ready to help community members who need help without having to be asked to help (Gastelum, 2014; Jackson, 2014).

The Peacemakers may volunteer to work with the youth and community members when they are referred to the criminal justice systems. They are interested in the well-being of the community members who are affected by wrongdoing. If the wrongdoers, by choice, are referred to the circle, the volunteer Peacemakers guide them in their journeys back to what they call the right path. This relationship between Peacemakers and wrongdoers is useful, because troubled youth may have problems that an outside court system may not be aware of, such as absent parents, trauma, or other childhood hurts. Once the case is sent to the circle, the members are given empathy, not judgement (Demmert, 2014; KCS, 2014). “We know the person and they are not judged” (Demmert, 2014). “Instead of judging that person as bad, we pick them back up. You still live here. I’m still your relative” (Aceveda, 2014). When you take someone out of the community, it affects the community. In Peacemaking, the community members know what’s happening and can help. Another benefit of having a community-based process is the follow-up of the agreement. “People in the circle get to watch the person(s) to see if they are following the agreement” (Aceveda, 2014).

Several of the community Peacemakers were born and raised in their community, whether Kake or Yukon, Canada. As a result, the community members know the wrongdoers who are referred to the circle and related to many of them. There are many grandmothers, grandfathers, aunties, uncles, and cousins, even if not by blood relations.

The community volunteer Peacemakers, as participants in Circle Peacemaking, are dedicated people who are selected by their values and the lives they conduct (Kadake, M., Kadake, E., 2014). They are dedicated to the well-being of the community and share one of the core community values of helping others who are in need. They are the ones who are healthy themselves, and the ones involved in other community events (Jackson, 2014). They show understanding for one another, freely sharing information about their own lives and how they overcame adversity and problems (Gastelum Interview, 2014).

When the Circle Peacemaking is in progress, the volunteers take notes in the Circle, get the people together, and bring snacks and food. They are willing to help with the follow-up plan after the meeting. Jackson calls a community volunteer and leader a servant of the people. These are the people who listened to their elders when they were growing up and who know and practice the core values of their community. They are the volunteers of their community and work towards the health and well-being of their youth and the elders. “In my opinion, the true leaders are the ones who are humble about their accomplishments” (Jackson, 2014).

Almost two decades have passed since the first Circle Peacemaking was created in 1999. Jackson is now retired as a Magistrate-Judge from the court system. To sustain the Peacemaking process, there has to be an ongoing set of contributors who hold up the Peacemaking tent, so that it brings new participants in as the older ones retire. “To me, whether no one picks it up here and goes with it – it was meant to be that way, I guess” (Jackson, 2014). There was also mention of

asking clergy (Kadake, E., & Kadake E, W Interview, 2014) and youth to the Circle. The youth involved in the Circle will carry on the practice and the Circle is their training ground. “The fact that we are [practicing Peacemaking Circles] is training other people and generations” (Jackson, 2014). The community needs a core group of six or more participants who want and know change. “Get that balance back. Get the good things back up. Don’t give up. The right way is the Native way” (Aceveda, 2014). “When we started, we didn’t have nothing. Just ourselves. It’s always been good. Everything was a learning process. It’s a work in process. It’s still being improved upon” (Aceveda, 2014)

Group 2: Indigenous Leadership and Circle Peacemaking in Kake

Theme 2: Indigenous Leadership in the Circle process are supportive and non-judgmental.

The main reason the Circle process is preferred over a state court process is because the Peacemakers in the Circle are supportive, and non-judgmental. They are there to be helpful in creating a space for people to make amends. They support both the wrongdoer and the victims. In any small village or town, everyone knows one another and often are related through marriage, clan, or blood. They [Peacemakers] know and care for one another and show kindness (Aceveda, 2014; CI, 2014; Demmert, 2014; Jackson, 2014). Often, they “[are] more understanding of one another” (Gastelum, 2014).

Elders as Leaders

One strength of Circle Peacemaking is the elders. Many of the elders have lived through hardship and suffered the loss of loved ones by suicide, alcohol, drugs, and sickness. Many survived boarding schools that attempted to stamp out their culture and language. Some left Kake for several years and returned. They share the values they were taught: respect and caring for one another. Elders in the circle offer advice to live a good life through stories, while the

court system follows the law (Kadake, E, 2014). Elders offer stories that carry traditional ways of repairing the harm done. “The youth in Kake have a lot to learn from the elders about the traditional way of living” (KCS, 2014). These are the same stories they were taught by their elders when they were young (Aceveda, 2014; Gastelum, 2014). “Now, if an elder is in the circle, we ask them how [a] dispute was resolved” (Aceveda, 2014). One of the participants defines how an elder is recognized in the community. Not just anyone who reaches a certain age is an elder. The elders are the ones who earned respect by how they conduct their lives (Jackson, 2014).

[Y]ou don’t become a respected elder by what you say or what you do, but how you conduct your lives and the values you live by. You don’t demand it. It is bestowed by other people that come to you because you listened when you are young. (Jackson, 2014)

While some elders were also former wrongdoers, they are a generation or two older than the present wrongdoers. As elders, they offer a foundation of wisdom, stories and advice. The former wrongdoers offer their experience and hope.

Former Wrongdoers as Leaders

The healing value of narratives emerges in the transmission of stories from those who themselves have been through the Circle Peacemaking process as wrongdoers in the past. They now return to offer direction for the wrongdoers experiencing difficulties. Many of these former wrongdoers were referred by the State, local law enforcement or local school. They may have come as family members in conflict. The former wrongdoers use the story of their former lives as testimony for making better decisions leading to healthy lifestyles. Past participants of the circle are not the only former wrongdoers to the circle. Overwhelmingly, the participants of both Canada and Kake spoke of the former wrongdoers who had harsh lives, whom the participants call “survivors” (Aceveda, 2014; C1, 2014; Demmert, 2014; Jackson, 2014; Kadake E, 2014;

Kadake E.W., 2014). They are the products of alcoholism, drug abuse, jail systems, and other unhealthy lifestyles. They went through a lot of changes in their lives, and like the elders, they offer their stories and advice of lives turned around for the better. They share their experience of incarceration and life's hardships and the lessons they learned from their mistakes. Former wrongdoers are important leaders in the circle because they share what they went through, and how they survived and made their lives better (Kadake, E. Interview, 2014). They are considered the "Big Medicine" (C21, 2014) in the Circle.

It's not by the education you get in the university you got a grasp on this [living healthy]. It's by life's experiences. It's by going to jail. It's by being bullied by the police. It's by having the social worker giving [false] stories about you. Out of all of that, you start to think there's got to be a better way of doing things than this. (C1, 2014)

One of the interviewees was in and out of jail beginning at age 14. He uses his experience to tell young people that there is a better way to live. "Use your experience that you learn to contribute to a healthy community," says C1 (2014). Another participant had felt "lost" in the city before returning home to Kake. The leaders in the circle are not ashamed to share freely what has happened in their own lives and how they could have made it different (Demmert, 2014).

Supporters of the Circle

Circle Peacemaking design did not happen overnight. In fact, it took several years and many supporters along the way. The pivotal change occurred in 1998 at a Magistrate's conference that Magistrate Mike Jackson attended. It was at that conference that he met Harold Gatensby, a Peacemaker and Tlingit from Carcross, Yukon. Gatensby was there to share about the circle he and the territorial Judge Barry Stuart and others started in their community. "When Harold started talking we knew exactly what he was saying. And he apologized that maybe he might offend some people" (Jackson, 2014). The Tlingits in the audience answered him in the traditional way, "Go ahead, Grandson" (Jackson, 2015). "Say what you have to say. Don't worry

about offending us.” Mike and the other Tlingit participants knew he was speaking about Ku.wéex’ (traditional Tlingit memorial potlatch). Mike and the OVK Organized Village of Kake invited Gatensby and other Peacemakers to Kake to hold a Peacemaking training in 1999. One week later, Kake held their first circle.

Circle Peacemaking has survived because it did not operate as a closed system but instead included input from professional service providers of goodwill, who were sympathetic to Peacemaking and provided helpful links to the western legal institutions. This category includes the leaders of the community such as the Village Public Safety Officer (VPSO), local school administrators and teachers, local health agencies, to mention a few (Aceveda, 2014). The Circle designers stressed the importance of working together with the State court and agencies towards a common goal of community wellness. Participation from “outside” service workers such as social workers, counselors, teachers, therapists could offer professional help and advice. C1 says: [T]he State can’t do it alone, but neither can the community. So, we have to learn to how to work better together for those who are less fortunate than we are. Change [is] not going to [happen] by being compliant to a system that’s foreign to us (C1, 2014).

An example of an undiagnosed wrongdoer can be a youth with Fetal Alcohol Stress Disorder (FASD) that results in compulsive behavior, or trauma involving Post Traumatic Stress Disorder (PTSD) and depression. “It’s good to have counselors. Whether they are grief counselors because you run into that” (Jackson, 2014). There may be learning disorders that lead to poor function in school. “[I] know this for a fact, that [when] both of them [State and Native community] work together – that the communities become stronger” (Jackson, Interview, 2014). FASD and PTSD are just a few symptoms that call for professionals in the circle who can help

the community by sharing their advice for the care of the victim and/or wrongdoer. This is, in addition, a cost-saving approach to the system and community. Jackson states:

[T]here needs to be that wrap-around service system so that something could be addressed while the youth is still young to save society billions of dollars down the road. It is something to look at. Those wrap-around services should be done while they are young rather than punish them and keep them in jail. (Jackson, Interview, 2014)

The local school principal, law enforcement, and community health workers are supporters of the circle. They believe that young wrongdoers addressed by the Circle Peacemaking are held accountable to the community and victim(s) for their actions. On the other hand, when they are referred to a State agency, the local people are left out and the accountability is taken away.

“[The youth] is no longer accountable to the people” (JS Interview, 2015).

Theme 3: Traditional values and teachings are important to the Circle process because it strengthens and maintains Tlingit identity.

“Our ancestors are the pillars of what we do now” (Aceveda, 2014).

The traditional ways of resolving conflict are not “new” ways among the Tlingit people of Kake. In order to resolve conflict in a community, people used to counsel together in a circle (C1, Kadake, E., 2014). Circle Peacemaking in Kake is based on Tlingit language, tradition, and values. We can even see this in the traditional names: Guwakaan (Peacemaking) Naa Káani and/or Shaawát Guwakaan (Peacemakers). The Peacemakers of the present-day Circle Peacemaking put into practice their traditional principles and values of Peacemaking which they learned from their parents and elders. Kake Peacemakers say that they practice what they have been taught, and they know that all communities may have a different approach to dispute resolution and living a balanced life using core community values. “Circle Peacemaking creates Tlingit identity” (C1, Interview, 2014).

One of the core community values for Kake is respect for self, for others, and for the land (C1, 2014; Demmert, 2014; Gastelum, 2014). When one shows respect for self, that person earns the respect from others (Demmert, 2014). Teaching respect in the circle will strengthen the Tlingit identity. “Our traditional values and teaching strengthens our identity as Native people” (Aceveda, 2014). For those seeking to design a dispute resolution program in their home village, one piece of advice given by Kake participants is to “look at what their values are” (C1, 2014; Demmert, 2014; Jackson, 2014). When Mike Jackson was a child, he followed his grandfather, a community Peacemaker, to the homes in Kake where there was conflict among family members. His grandfather listened to all of the grievances and assisted the parties in resolving the conflicts among one another. Sometimes, the Circle was formed by sitting around the kitchen table. Before his grandfather died, he spoke to both his son and grandson. He said, “Bring back the Tlingit in our people” (Jackson, Interview, 2015). He said to his father, “That sounds like “Guwakaan”. His father agreed. The Naa Káani [people] were the ones that were the Peacemakers and teacher. Each clan had one from the opposite moiety.

[The Naa Káani] taught them their values, they taught them their history, they taught them where their territory was. And if there was a problem that came up between families, or clans or nations, they had these Naa Káani [people] to help them settle any disputes and broken relationships. And there’s people called Shaawát Guwakaan. That one is an interesting one because it’s these Naa Káani that [are] usually called this and it’s another name for them. (MJ, 2014)

Respect is a strong Tlingit value in Kake shared by the participants. As stated above, the different respects I found in during interviews were:

- (1). Respect for self (C1, 2014; Demmert, 2014; Gastelum, 2014).
- (2). Respect for one another (C1, 2014; Demmert, 2014; Gastelum, 2015).
- (3). Respect for earth (C1, 2014; Demmert, 2014).

Ku.wéex' is a Memorial Potlatch Ceremony and Maintaining Relationships

Peacemaking has an integral relationship with traditional potlatch practices in Tlingit country. Today, the circle Peacemaking process is a coming together of community members, wrongdoers, and victims using the traditional practice of resolving conflict fashioned after Ku.wéex', a Potlatch “Thank-you” ceremony for the opposite clan, facilitated by Peacemakers for maintaining balance in the community. “We are bringing back our traditions. How was it done long ago, before we were born” (Aceveda, 2014).

The elders told us that they always used Circle Peacemaking. They didn’t call it [Circle Peacemaking]. What they told me is that they used the Ku.wéex', the memorial where the family and clan were putting on a “Thank-You” a “real big Thank You” party for the opposite moiety, like Raven. (Jackson, 2014)

The practice of Ku.wéex' is one of maintaining balance in the community. “Peacemaking is like Ku.wéex' to keep peaceful relations,” said Jackson (2014). “Traditionally, people had to resolve conflict in order to live together” (C1, 2014). “I understood our ancestors did. They counseled together in a circle. They used our traditional values” (C1, 2014). “Our Ancestors are the pillars of what we do now. They lived a good life” (C1, 2014). “We need to somehow try our best to replicate that if we can” (C1, 2014).

So, Peacemaking has always been around. All I’m doing is taking a very small piece of our traditional way – if you will – a little snip from my fingernail on my small finger of what the whole thing is entailed in the Tlingit Guwakaan people because it is a formal process. If you look into it, it’s a very ritualistic way of talking in a good way – talking from the heart. It’s not talking from the paper. It’s talking from the heart to make sure that the people that are there learn from your experience. (Jackson, 2014)

After exploring the elements of design of the Circle Peacemaking process in Kake, there were seven principles and practices that were important to the people who were interviewed. These were the foundations of design that created a strong Circle in the community.

Seven Principles and Practices of Circle Peacemaking in Kake

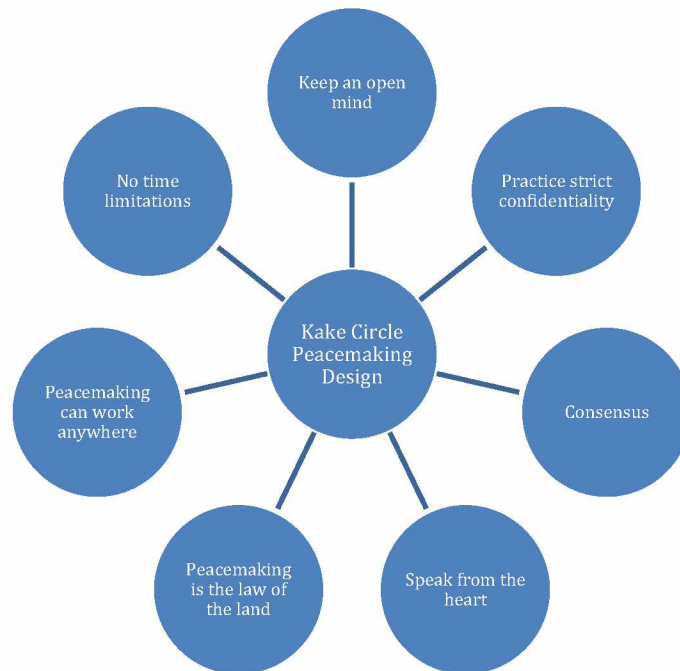


Figure 9. Seven Principles and practices of Circle Peacemaking Design in Kake

Theme 4: The Principles and Practices of Circle Peacemaking is a local design in Kake

1. Keep an Open Mind

One resonating theme from the interviewees is the importance of keeping an open mind while in the Circle (Aceveda, 2014; Demmert, 2014; Gastelum, 2014; KCS, 2014) and to be willing to learn from the process. The definition of open-minded is a “willingness to try new things or to hear and consider new ideas” (yourdictionary.com). “We learn much better with an open-mind. We can accept differences in individuals. Not only is the willingness to be open and also not afraid is important in this setting” (KCS, 2014).

“There is more than one way to resolve a conflict or broken relationship” (Jackson, 2014), when the old way used by the criminal justice system is to punish. Many elders were punished in

boarding schools when they were young or were taught that punishment was the only way to resolve a conflict.

2. Practice Strict Confidentiality

Confidentiality is very important practice in Circle Peacemaking (Aceveda, 2014; Demmert, 2014; Gastelum, 2014; Jackson, 2014). Because of the confidential nature of the Circle, there are times when Circle Peacemaking convenes and very few residents are aware it is happening. It can be that relationships are in trouble and need advice. There are at times personal problems between couples, family members and community that can be helped locally. For example, there is a couple with marital problems who went through the Circle Process and are still together (Kadake, E., 2014; Kadake, EW, 2014). The community of Kake is small with a population of less than 500, so the majority of the designers and participants stress the importance of confidentiality. Creating trust to those who share their stories of pain is important. What is shared in the circle remains in the circle. When something that is shared is leaked out, it is not too difficult to track down the person by following the sources. “We know who’s talking and we find them” (Gastelum, 2014).

3. Consensus

The Peacemaking consensus process works when it adopts Indigenous leadership practices, which include lateral communication and consensus building instead of top-down management approaches. Along with keeping an open mind and confidentiality, the Circle participants make agreements based on consensus which are favorable to the community participants of Circle Peacemaking (Aceveda, 2014; C1 2014; Jackson interviews, 2014). That differs from majority rule when everyone has to agree with one another.

4. Speak from the heart

All participants are encouraged to speak from their hearts, keeping the conversation honest without having to intellectualize or professionalize the experience they share with the circle. The participants involved in the circle spoke about inner healing that is experienced by all the circle participants including the wrongdoer and the victim. For some of them, the healing may result by telling their story for the first time. For elders, it may result by telling ancient stories of the “law of the land” that was once silenced (Jackson, 2014). For the wrongdoer, it may be “asking for forgiveness” (Kadake, E., 2014) from the victim. The circle focus is on the repair of the harm to the victim. There is more than setting an agenda for the wrongdoer. “The circle is a safe place to really express your needs and where we really listen. We are here to help” (AG, 2014). Former participants have gone on to live productive lives, including the above mentioned married couple who went through the circle process (Kadake, E., 2014, & Kadake, EW, 2014).

5. Peacemaking is the Law of the Land

Peacemaking is the law of the land and cannot be owned or claimed by any clan or moiety. The Guwakaan people are the deer people. “The whole term is sacred” (Jackson, 2015). They encompass all Peacemaking. And it’s the deer people – it’s the sacred animal. No clan, no Eagle or Raven moiety claims it. “The symbol of the deer that eats only grass and doesn’t hurt anything other than plants, even though they have superior hearing and smell, but they let us human beings harvest them because they take pity for us” (Jackson, 2015). “That’s how Raven set it up. It’s a term and symbol. [Circle Peacemaking] is sustainable. It’s the force that has always been here” (Jackson, 2014).

Each aboriginal people have Peacemaking laws. That's how we existed in communities. You guys do it your way. We do it this way [Circle Peacemaking]. We have never had Chiefs. We have clan mothers, our leaders. They hire someone to talk for them (Jackson, 2015).

6. Peacemaking can Work Anywhere There are Peacemakers

Some of the Kake Circle Peacemaking participants and supporters are “outsiders who live in Kake. They recognize the dispute resolution process as something their ethnic group practiced traditionally. One supporter who participated in the circle a couple of times comes from a Celtic background. He said when he heard about Circle Peacemaking, he recognized it as something that was practiced in his country.

Peacemaking can work anywhere. As long as people have their minds set on contributing to the community for the better. There are no set rules other than the fact that you are a caring person. We only brought forward the [Circle] Peacemaking because it translates out of Guwakaan, the Peacemaker.... And the good thing about Peacemaking is that Peacemaking could be done anywhere. It's being done in New York, Dade County, Florida, Georgia, South Carolina, North Carolina, Minneapolis, all through Canada – it's not foreign to people other than the fact it is a process of Restorative Justice (Jackson, 2014)

7. No Time Limitation

One reason the circle Peacemaking process is effective in the community is because the participants are rarely limited by time. In the regular court system and often the tribal court system, the judges are usually under severe time constraints. The Circle Peacemaking process may take hours. “Some people take a long time to talk. There is no time limit. Western way – there is a time limit” (Aceveda, 2014). Often the circle will meet again to follow-up or to celebrate a milestone. There is always time even if it takes hours.

Group 3: Resistance to Local Peacemaking Design

Theme 5: The designers initially faced resistance from local leadership but chose to continue holding circles and invited the resisters.

When implementing the Circle Peacemaking process, the designers met initial resistance from community members who were suspicious of it because Peacemaking and the related practices of potlatch were forbidden and/or discouraged. In the beginning, one of the challenges to the design of Circle Peacemaking was resistance to the “new” Circle Peacemaking Process. When the Circle began in 1999, some local people resisted the idea of a local dispute resolution program, because Circle Peacemaking was “new” process without precedent except in Canada. “We were bringing back our traditional way of resolving conflict. People asked us, ‘Why are you doing this?’” (Aceveda, 2014). Some community members said, “You should not be doing this” to the newly formed group (Aceveda, 2014). “We hit brick walls. We just kept doing what we were doing. It was hard, but it started getting easier” (Aceveda, 2014). Instead of avoiding the resistance, the Peacemaking participants invited the people who were skeptical and resistant to participate in the circle. “They didn’t know anything about the process until they were invited to the circle” (Aceveda, 2014, Demmert, 2014). Demmert was not involved until her family member was participating in the circle and asked her to be a supporter. As an elder in the community, she is one of the committed volunteers (Demmert, 2014).

Theme 6: The single-most challenge facing the Circle Peacemaking process is buy-in from professionals.

One of the biggest challenges for Kake Peacemaking designers is getting outside professionals to support and participate in the process. Though the circle offers advice and support, there are problems that counselors can address. “We are not counselors” (Jackson,

2014). For example, if a person has undiagnosed bipolar problems, it is difficult to recognize that person needs help. “Professionals can identify that” (KCS, 2014). Another challenge is to get support from the enforcement agencies. There are also internal challenges they faced with their own citizens.

One challenge is that the Circle Peacemaking process is not taken seriously by the wrongdoers who think Circle Peacemaking is an easy way out (Gastelum, 2014). Another challenge is finding enough people to give their time (Demmert, 2014; Jackson, 2014) to participate in the Circle Peacemaking process.

My observations - Kake as a Community of Care

The Circle Peacemaking process is part of the total big picture of community wellness. It used to be that the only community events in Kake were funerals, but today the community celebrates many events, milestones, and celebrations. In addition, there is the summer culture camp for youth for members. Communities need to offer “good time” (Jackson, Interview, 2014) events in the community to offset the sad times (Aceveda, 2014; Jackson, 2014). When I was in Kake on my first visit, there was a community dinner and traditional dancing where the community hall was filled with local people. There was a lot of laughter. In addition, there was a community dinner that included after dinner Tlingit dancing and fun dancing. On the second visit, I traveled by ferry to Kake that arrived around midnight. It appeared like the whole town was awaiting the arrival of a bereaved mother and family. Her daughter had passed away and the family was bringing her body home for burial. This was a strong indication of clan, family, and community strength. On that visit, there was another event – a community dinner to celebrate the addition to the Elder’s residential Center. On my third visit to Kake in 2015, there was a grand opening of the new section of the Elders’ center with fresh food from the sea and speeches

from local leaders. “Now, the good things are happening. We are having fun and involving the whole town” (Aceveda, 2014). In the spring of 2017, there was a community lunch at the Elder’s Center.

Community dinners contain a lot of joking around and laughing. Every time I visited Kake, I was invited to the local events. On my last visit in spring 2017, I was invited to a 40-day dinner at a residence home where the husband had passed away. Many members of the community arrived to share in the dinner. Also, on that visit there was a 5K run for the youth that carried a theme of respect. This run involved men in the community teaching the young school age males about respect. The run included women who also taught respect to the young girls and teens. Wherever I went in Kake, People were friendly and helpful. They waved to me in passing by in their cars or offered me rides. At one visit, a community member loaned me her bike as the motel was out of town. I feel welcomed to the community and hope to return many more times.

Conclusion

The annual State of the Judiciary reports show that the Chief Justices, over the span of 44 years, showed interested in the design of dispute resolution process in rural Alaska, though their attempts of design were short-lived. The reports showed a judicial leadership that gravitated towards design they were more familiar with, such as Alternative Dispute Resolution processes like mediation, therapeutic courts and Restorative Justice. It was not until recently that the State courts have become more interested in diverting cases to rural Alaska and creating collaboration between state with tribal courts. The Rules of Court created by the judges, more recently, encourage more local design in rural Alaska. The participants in the study, mostly Peacemakers and designers, designed local Peacemaking circles based on their tradition, practices and values.

Lastly, my own observations of Kake showed a community that celebrates events with food, dance, teaching respect, and fun.

Chapter 5: Discussion Chapter

Introduction

In an attempt to discuss both themes found in the Results Chapter, I have divided this final chapter into two sections. The first section discusses the several themes that emerged the Chief Justice reports Alaska Rules of Court, interviews and observations. The second section contains steps and practices found in the themes which are useful in designing a Peacemaking initiative in rural Alaska within the context of a developing field called Indigenous Dispute Systems Design. To begin, the first point of discussion relates to the themes indicating the judicial field's pendulum of support for local Native design of dispute resolution initiatives in rural Alaska. It is apparent from the themes that the legal system was supportive of local dispute resolution systems in the early 1970s, but only on their own terms and using their approach to design.

The Juridical Field: The Culture of Power, Prestige and Money

We live in a world now today where most often the people, that are not even part of a community, are the ones who make the decisions about what is best for us. (Gatensby, 2014)

As discussed in Chapter 2, the “juridical field” is a term given by French sociologist Pierre Bourdieu. He defines the “field” as a culture within a profession. Examples of professional fields are the juridical, legal, medical, educational, and artistic fields. Within any given field is what Bourdieu terms “change agents” who are the people who work towards changing the field. The “actors” or “agents” are the people working within the field who often are influenced by forces within the culture within which they work. Both Indigenous and non-Indigenous people should be aware of the forces of influence at play forcing conformity to the Anglo-American culture. Bourdieu contends that most actors conform to the pressure of the more powerful culture without being conscious of their decisions. The change-agents are the ones who, despite the

pressure to conform, are conscious of the need for change. How they create change is a conscious and deliberate effort.

Actors within the juridical field interact with one another to a greater or lesser capacity. Some major actors within the juridical field are the judges, lawyers, administrative employees, social workers, mediators, arbitrators, Restorative Justice practitioners, tribal court judges, council and clerks. The members of the community-based dispute resolution process are also affected by the forces to conform to the expectations of the juridical field or the community. Designers of the Circle Peacemaking in the villages may have felt pressure to conform to outsiders' conceptions of Peacemaking.

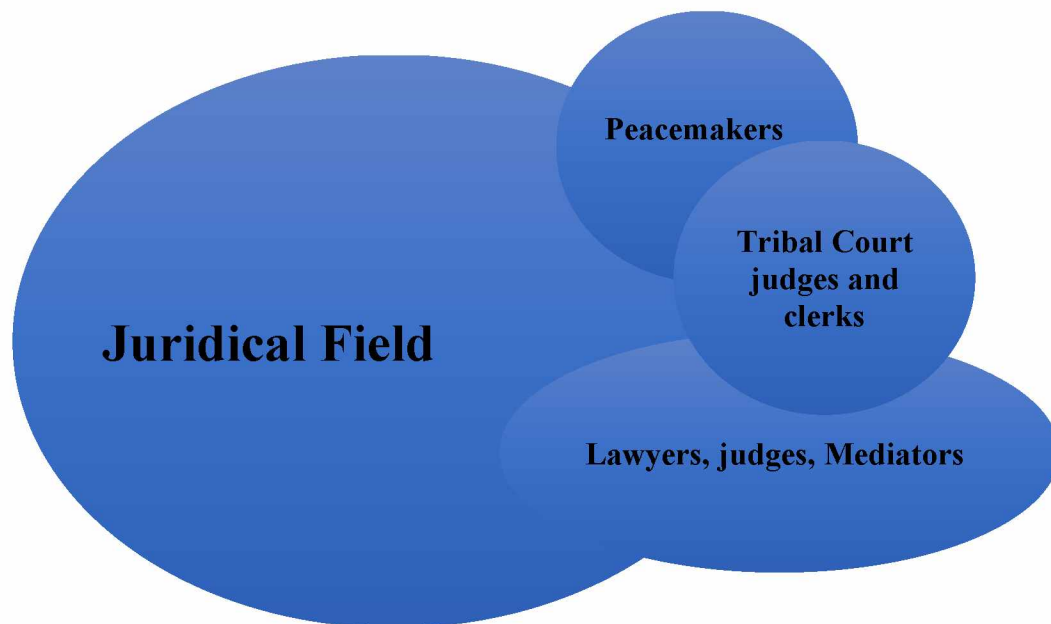


Figure 10. Actors Within the Juridical Field

All the actors in the criminal justice system are influenced by the juridical field's culture of power, prestige and money. A good analogy to describe the subtle but powerful influence is that of a strong magnet's pull on all "actors" within the juridical field. Often, the tribal court process in rural Alaska is similar to the State court process because tribal court is a product of the Anglo-American justice field construct. As has been my experience, and that of others, the tribal court process in rural Alaska is confined to a large caseload and limited time much like the State court time pressures. Furthermore, the tribal court process is much akin to an arbitration process with the judge(s) making decisions based on evidence. While this is not a critical statement, it just points to the fact the tribal court process may be much like the State court process but without the resources. It is not strange that a foreign system is in practice in a Native community, as other systems, such as the educational and medical system, have been in practice as well. What Bourdieu points out is that the invisible pull is so subtle, yet strong, creating a climate of conformity to a more influential system. The reason that the juridical field influence in Alaska is so strong is because the agents, often, without question, accept rules and policy defined by the more powerful system. However, the criminal justice field in Alaska is based upon colonial principles set in place when the Alaska became a state in 1959. The criminal justice system imposed its laws upon the Native people without respecting traditional laws. This is colonial practice. Bourdieu states:

The colonial society is a system whose internal necessity and logic is important to understand, because it is the context which gives meaning to all forms of behavior...[and disturbances] that were knowingly and methodically produced in order to ensure the control of the dominant power and to further the interests of its own nationals (Bourdieu, 1962, (p. 120).

In the Indigenous field, the acceptance could be a result of colonization and dependency on a powerful system. "If one wanted to understand the "field" metaphorically, its analogue would be

a magnet: like a magnet, a social field exerts a force upon all those who come within its range”
(Bourdieu, 1987, p. 806).

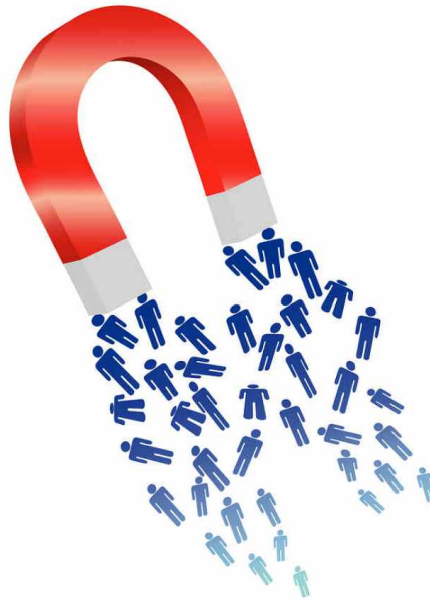


Figure 11. Magnetic influence in the Juridical Field.

<http://contentmarketinginstitute.com/2013/06/content-marketing-types-continuously-attract-prospects/>

Chief Justice Reports Reflect a Changing System

The Chief Justices, in their reports, gravitated towards supporting local dispute resolution systems, such as the Village Conciliation forums they mentioned in the first three years of the reports. The fact that the Village Conciliation forums were arbitration forums gives testimony that the outsiders to an Indigenous culture lacked the land-based traditional knowledge to design a dispute resolution process in a Native village. The number one reason is because they are outsiders to the community and Native culture. They instead designed a dispute resolution initiative that is similar to the Anglo-American process, because that was within their knowledge field. The later reports certainly reflect that the Chief Justices leaned towards dispute resolution processes already known their field, such as mediation, arbitration, and Restorative Justice.

These processes occurred predominantly in urban areas where specialty dispute resolution was available, not necessarily as a tool for Native people in rural Alaska. For the first decade, the approach toward Restorative Justice design in rural Alaska was from the top-down.

The judicial system in Alaska, a centralized system, is governed by the Chief Justices of the Supreme Court. When change occurs in a field such as the justice field, it usually starts from the top executives and works its way down the levels of command. As I mentioned in Chapter 3, the Chief Justice Annual reports to the Alaska State Legislative body highlight the activities, concerns, and endeavors in the judicial branch of the State government. With a state as large as Alaska, the judicial system is spread quite thin between urban and rural needs.

On that note, the question I asked as I read the State of the Judiciary reports from 1972-2016 was: “Did the Supreme Court Justice reports acknowledge and support community-based dispute resolution design initiatives in rural “Alaska?” I did find that throughout the years, the reports indicated that the Supreme Court Justices in the juridical field acknowledged and supported local Native leadership. Most importantly, I was very interested in reading their support for the Kake Circle Peacemaking. However, what I found was that Circle Peacemaking was only mentioned three times in the 17 years since it started practice in 1999. Furthermore, the reports, though not surprising, also reveal that the Chief Justices gravitate more towards dispute resolution processes that were known in their field. Mediation was mentioned most for family law and for cases where children were removed from the family. The annual reports, beginning in 1977, reflected the events and challenges of the year. It is a fact that outside, faraway services do not and cannot meet the needs of a small village or community in rural Alaska.

Decade of Top-Down Design in Rural Alaska, 1972-1982

The first decade of the Chief Justice Reports, beginning in 1972, reflects a growing criminal justice system in rural Alaska and the need for more funding for the expansion of the court system in rural Alaska. State magistrates were assigned to rural hubs where courthouses needed to be constructed. The early Chief Justices believed rural justice was better served with magistrates, village police and constables: “We believe that the expansion of the village police and village constable concept will promote the orderly administration of justice in Bush Alaska” (Boney, 1972, p. 11). Several of the reports referred to “Rural Justice” or “Bush Justice”, but they were often in reference to the State magistrates and/or traveling judges to the rural regions. Sadly, for many of the 42 years of reports, there is little mention of “Rural Justice” or “Bush Justice” community-based dispute resolution design. The reports make no mention of local design and ignore the fact that Native traditional ways of resolving conflict and keeping law and order already existed in the communities long before the first settlers arrived. In the first report written in 1972, Chief Justice George F. Boney reports that the Alaska Court System had focused its interest “on the problems in rural Alaska” (Boney, 1972, p. 7), and that 99% of the problems were associated with alcohol. In urban Alaska, the problem for Native people stemmed from “not being fully assimilated into the so-called dominant culture in our metropolitan areas” (p. 18). The report showed clearly that it is within the freedom of the Chief Justice to be very opinionated, as he did not cite any studies to support his statements. However, he makes reference to the “lawless elements of our society” and the state of the common criminal’s mind. We can safely conclude the “lawless elements” is his reference to Alaska Natives because of his statement in the same report regarding Alaska Natives and alcoholism. He states:

The common criminal's conduct is usually a product of deep -seated character and personality deficiencies. These character and personality deficiencies often manifest themselves in alcoholism and hard narcotic addiction (Boney, 1972, p. 18).

Village Conciliation Boards in Rural Alaska, an Attempt at Top-Down Design

For three years (1975-77), the Chief Justice shared hopeful reports of the newly designed Village Conciliation Board, also referred to as the “problem board” project developed in six remote coastal villages in western Alaska along the Bering sea. This particular dispute resolution process was their “experiment” with this design for problem-solving in the villages (Marquez, p. 1). The initiative was designed by State Court employees who lived outside the villages. The members of the Problem Boards were selected by the tribal council members or were the tribal council members, as was the example in one village. A local facilitator was hired in each village to work with the outside design team. The panel met with juvenile and adult cases for civil cases, theft, property damage, minor assault and battery, drunk and disorderly behavior and marital and domestic relations. The court attempted to design a process for the village with clear goals: “The basic objective of such early efforts of ‘conciliating’ these disputes was to encourage ‘Eskimo’ villages to deal with minor legal problem of villagers in a local way” (Marquez, 1977, p. 8). However, according to the final report to the State, the Village Conciliation Boards within the six villages were both not locally designed nor owned. The State court had an employee fly to the villages on a regular basis to monitor the activities. In 1977, the final report to the State of Alaska court system stated the evaluators’ opinion that “the total number of cases considered and resolved by the conciliation boards was disappointingly low” (Marquez, p. 88). The reports regarding the Village Conciliation boards ended after three years.

In 1982, the State tried another pilot project that involved a circuit judge who traveled to villages with their team of attorneys to hold local court. The 1982 report only spoke once of the

pilot project. It is uncertain why this initiative did not thrive. A few decades later beginning in 2015, the reports mentioned for a few years of a revival of a circuit judge in Galena who was holding community circles termed as a “community condemnation” circle in some of the communities. This was an opportunity for community members to participate in a community circle with the offender, and then give their sentencing recommendation to the judge, who took the recommendations under consideration before sentencing the offender. The reports, while glowing of the efforts, went silent when the magistrate’s position and several others in Alaska were cut because of funding decreases.

Funding is a big factor in design. Most dispute resolution initiatives are launched with federal or state funding, and many last only as long as the funding remains. Most dispute resolution initiatives are therefore framed within the scope of their funders who advocate for the design to build upon the principles of Restorative Justice. Most designers are paid employees within a tribal office. This statement is not to demerit the efforts by funders and tribal offices, because all design efforts that address conflict at a local level are better than a distant phone call from a probation officer who already has a high workload.

Safety-Zone Theory and State of Alaska Court System’s Design

Native self-determination and sovereignty has been encouraged and hampered over time by government policy. The pendulum started with “erase and replace assimilation” policy dating from 1880s to 1950s for the Alaska Natives. The boarding school era in Alaska was a policy within the educational system to assimilate the Native youth taken from their families to faraway boarding schools. Similarly, within the justice system, tribal government jurisdiction was removed by territorial judges and later State magistrates. In my village when my mother was a youth, tribal council members used to enforce curfew with the youth, and they were strict

enforcers of the law. That self-governing ability diminished as the State Court's jurisdiction increased and saturated the rural communities with their overarching, invisible presence. A village council could not enforce dog leashing laws for fear the council would overstep State Court jurisdiction. However, state policy is changing to that of support of local community processes as evidenced in the recent reports. However, if one reads the wording carefully in the Alaska State Rules of Court, the government is identifying local processes such as "Restorative Justice," a term not used in Indian Country. Native leaders should be aware of who is making the rules and creating the terminology. A "safety-zone" is one that is still controlled by the outsiders to create a system that complies with their rules and policy and considered safe by their standards. The Restorative Justice process, with all its principles is a new terminology in Native villages though several tribal councils have received government funding to design RJ programs.

One of the examples of a safety zone is the recommendation flow chart in Appendix A creating the process for tribal courts to use within the confines of the latest Alaska State Court Rules of Law for Criminal Rule (11) (i). While it appears that the State Courts are becoming more agreeable to working with tribal courts, the reality is that they have set up an Plan or Agreement that is creates more burden on the tribal court clerk who already backlogged with cases. Under the "Plan" or "Agreement" (see Appendix B) the State will arraign and convict the tribal defendant in State Court before the tribal court can intervene with their recommendation for sentencing. The process asks that the tribal court personnel (usually the clerk) will monitor the State Court calendar daily. This is assuming that the tribal court has daily access to internet. If there is a defendant who is charged and convicted with a criminal charge, then the tribal court must undergo five steps in order to make recommendations for sentencing to the court. First, the tribe will request a copy of the complaint from the State. Second, the tribe will notify the State

court for a tribal hearing that can be a Circle process. Most tribes are located in remote areas of Alaska so the defendant may have to fly to the hearing. The cost of travel is not covered by the tribe. If there is a conviction that requires a state trooper escort, the cost still needs to be covered. Once the defendant has arrived, there is the question of lodging if there is no jailhouse. The tribe will hold a hearing that may be a Circle before the defendant is returned back to the state facility with the Circle recommendations to the court that the judge may or may not take into consideration.

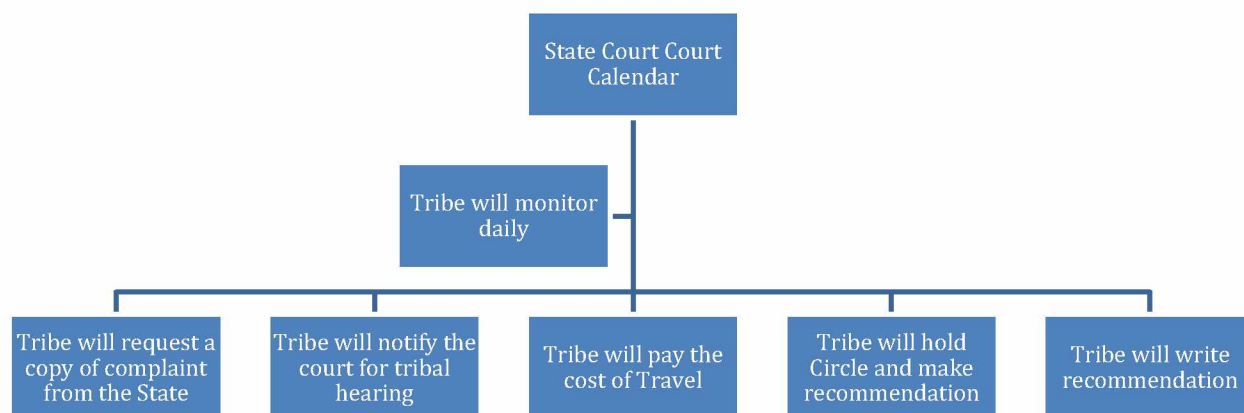


Figure 12. Recommendation Chart required for criminal cases under Rule 11(i)

While there is interest in working with the tribes, the State of Alaska is drafting agreements that are confusing and costly to the Tribes. There have been 12 tribes that have entered into agreements with the State of Alaska.

One Size Does Not Fit All: Restorative Justice

Much has been said and written about the RJ practices used as a platform for trainings for practitioners in rural Alaska. RJ principles, values and practices are used in in many programs

addressing youth and adult wrongdoers (Bazemore & Schiff, 2004; Van Ness & Strong, 2015). Howard Zehr (2002) describes the process as a compass guided by principles rather than a map. The process focuses on repairing the harm caused by wrongdoers within the criminal justice system. The three questions that are asked in any Restorative Justice process are: “Who has been hurt by this crime, what are their needs, and what are the obligations” (Zehr, 2002). Based on the principles and practices, RJ is akin to Indigenous ways of resolving conflict. In theory, both RJ and Indigenous practices are interrelated, except the latter is designed from ancient laws and Indigenous values, principles, and practices. In my journey, I felt there was a big need to contrast the two practices because the RJ is a “new” terminology to the Indigenous field, and Restorative Practices (RP) are based on ancient law. It was not the issue of what works and what does not work in the Native community, but rather who is designing the process. If non-Indigenous people, outsiders to the village, are designing the process, then this removes the community responsibility and creates a dependency on the outsiders.

Many people in rural Alaska may not even know the term “Restorative Justice,” but they will most likely understand the term “traditional teachings,” or “ancient law,” to name a few terms related to ancestral teachings, values and practices as they relate to restoring good relations after a wrong has been committed. When I first heard the term “Restorative Justice” in 2009, I had no clue what it meant, even after it was explained to me. At that time, I had no connecting points. Most RJ practitioners are trained and work within the criminal justice field. I was, as many Native people in rural Alaska, working outside the criminal justice field. Even recently, at a Peacemaking workshop in Anchorage, Alaska Native participants from rural Alaska did not know what RJ meant, but they understood RP based upon what they were taught to practice.

On that note, even the word “justice” is often hard to define among the Native people. What exactly does “justice” mean in a traditional knowledge system based on repairing the harm and creating balance back into broken relationships? I let go of my own argument regarding Restorative Justice as an outside concept and embraced the knowledge that any name given to a process that allows for transformation for a wrongdoer, a victim or anyone is a step towards community wellness. It may not be a lasting transformation if it is a funded project and designed by outsiders. The significance of local volunteer design of a restorative process is that the designers are local members of the community and bring their ancient teachings and wisdom to the circle.

The Circle works only when the wrongdoer is sincere in his/her effort to repair the harm done to another. All parties must agree to the process – the judge, attorneys, defendants, plaintiffs, and others related to the case.

- State criminal justice system: Handles crimes committed within the State. boundaries
- Federal criminal justice system: Handles crimes committed on federal property or in more than one state.
- Tribal court: Limited jurisdiction. Most tribal land in Alaska are on Alaska Native corporation property subject to state jurisdiction.
- Circle Peacemaking in Kake is a volunteer-based community-designed process that works with courts, schools and families.

Figure 13. State, Federal, Tribal Court and Circle Peacemaking Process in Alaska

Sameness in Western Design: Federal State and Tribal Courts

I chose to include tribal courts as a design example of a western construct because the State courts are referring cases to tribal courts facing the same time constraints and overloaded caseloads. The only difference in Alaska is that most tribal court judges are volunteers and do

not enjoy the same salary as their State court colleagues. Tribal courts are designed as arbitration courts; so, they are often ineffective in resolving family cases because of time limitations, for example. The “change-agents” within the criminal justice system have tried to design dispute resolution systems in rural Alaska and may continue to design tribal court models of justice based on Anglo-American values and practices. Most Natives in rural Alaska have had experience with tribal court arbitration. In my experience with tribal court. I was asked if I had an attorney present to represent me. The judges were pressed to complete their stack of cases very quickly. Needless to say, the experience was very disappointing. The decisions made behind closed doors were questionable, though the judges were working with the evidence they had and had very little time to listen to all the testimonies. The decisions were made without the input of all parties involved.

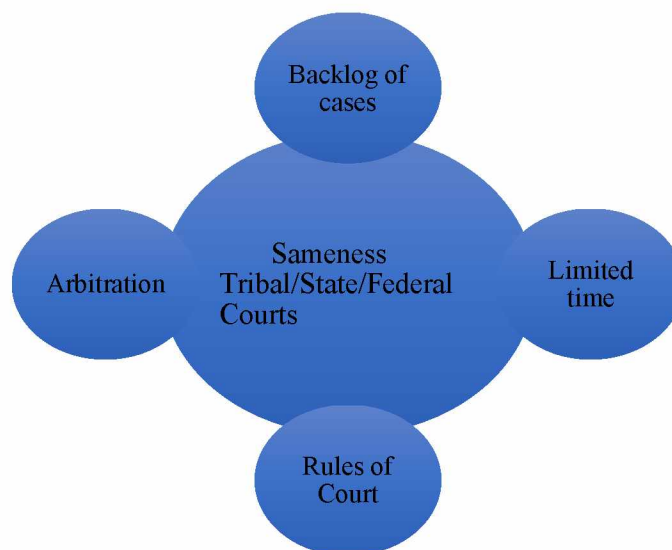


Figure 14. Sameness of Process: Tribal and State Courts Processes

This sameness of tribal court design that often mimics State court design often comes in the form of trainings by outsiders create rules of law that mimic State court. Without being aware, that an arbitration process that may not be helpful in resolving conflict, especially in cases

involving family. This may result in ineffective conflict resolution systems in many villages. This form of domination of values and structure over another value system stems from the attitude and belief that “outsiders” can fix the problems with little or no consideration of the Natives’ values, culture, and ways of doing. It is a very subtle and often unseen powerful influence that needs readjusting. Dimaggio and Powell, (1983) state that:

Coercive isomorphism results from both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function. Such pressures may be felt as force, as persuasion, or as invitation to join a collusion. (p. 150)

Insiders as Designers: Return of Local Responsibility

As mentioned before, most of the 229 tribes are located in remote regions and only accessible by airplane. These villages have their ancient laws and teachings regarding ways of governing and resolving conflict that preceded Territorial and State laws and design. Moreover, they were allowed to create laws and rules that worked for their community. For example, there was a time in the mid 1930s, when my mother was a child, that the village council enforced curfew for the youth in my home village of Northway. During the second World War in the 1940s, the community leaders enforced military visitation to the village unless granted permission. Council members daily inspected homes and families for cleanliness and order. The Upper Tanana people in Northway (and other Native people in Alaska) knew and practiced ancient laws and maintained law order long before the first settlers made contact and invoked colonial laws upon them. Local control and responsibility diminished greatly when the new territorial government became a state in 1959. One of the first moves to re-establish control was when the new State administration planted courthouses in many parts of Alaska. The closest courthouse to Northway is located in a non-Native community 55 miles away, in Tok. This incredible need to control is shifting from a centralized to more decentralized control. The State

judges are referring more cases to the tribal courts. In other regions of Alaska where there is capacity, the tribal courts have signed agreements for State referrals go to the tribes. Some tribes have funding to create Restorative Justice programs, but lack of funding is always a problem for many tribes. In a community where the Peacemakers are all volunteers, funding is not the issue. It is the issue of having community members who are willing to give their time to work towards community wellness and participate in Peacemaking both as a way of life and in the process as well. Peacemaking is sustainable in a village or rural community, if there are Peacemakers who live by traditional teaching, values and practices. Peacemaking can be any dispute resolution process that is based on community values.

Peacemakers are Volunteers Working Towards Community Wellness

In Kake, as mentioned in the previous chapter, the Peacemakers in the Circle Peacemaking process are the community volunteers. In addition, they volunteer for many of the community events. When I was in Kake, I saw the same volunteers repeatedly working in the community hall kitchen, showing up on early weekend mornings for youth events, etc. They are the pillars of the community.

There are Peacemakers in every village in Alaska. Some were born Peacemakers and some are trained. Some have grown into the responsibility. Peacemakers volunteer their time investing towards a healthier and happier community. They are the ones who work tirelessly helping others in their community. They are the ones giving elders rides to the store, visiting the homebound people, just to name a few examples. In addition, the Peacemakers in Kake give their time freely to the Circle Peacemaking process as a way to invest towards a safer and healthier community. They bring food to share after the circle process, and they support the victim(s) and assist in guiding the wrongdoers(s) in complying to the agreements made in the circle. They

serve as probation officers who watch and guide the wrongdoer(s) outside the circle. The Peacemakers share a value based on respect for self, others, and the land. Helping others in time of need is most important, according to the Kake Peacemakers. The following section contains 8 steps found in the design of Peacemaking in rural Alaska based upon the themes and wisdom found in the interviews, Indigenous Planning and Dispute System Design, and in my own observation and experience.

Indigenous Dispute Systems Design in Rural Alaska - 8 steps

The 8 steps to Indigenous Dispute Systems Design (IDSD) is a result of both Indigenous Planning, Dispute Systems Design and the research and interviews of this study. Most communities in rural Alaska are small and the majority of the population is Native. Change doesn't happen overnight in a small community, and if it does, it usually does not last long before returning back to the old system. It takes leadership with perseverance, vision, and patience for change to happen. Unfortunately, it often takes a crisis in the community to get people to meet together and the meetings are highly charged with emotion. Change to a new system happens even more slowly, if at all. In addition, residents of rural Alaska have busy lives. There is wood to gather for the winter, and hunting to feed the family. The summer months are the busiest with fishing and gathering berries. In some villages, the tribal council community meetings are postponed during the summer months. Several families have full time jobs. If someone passes away there are three-day potlatch or ceremony. Life can often be hectic in my village. On that note, problems may arise that create attention but does not require a community meeting. It is when the problems do not go away that lead to a crisis that the community members are more willing to meet together. Kake community members could no longer ignore the growing number of problems in their community with underage drinking and the rise of

suicides. In a small community, everyone feels the pain of loss. The emotional pain in Kake had reached a crisis level. After they invited outside consultants and advisors to visit their community and give advice, they were still left with the problems. There was a point when the designers decided that they were responsible for the change in their community.

1. Hold Community Meetings.

The first step to change is to begin a community dialogue. The leaders in Kake began to hold community meetings to discuss their problems. After several meetings, they formed a working group called the Healing Heart Council. They did not always agree among one another, but they did work together to design the Circle Peacemaking process. Invite community members or “key players” to the community meetings. Often in the village, when people are not motivated to attend meetings, a good approach is to invite key players and community volunteers to the meetings. I used to visit the elders in my community and invite them to the community meetings. Once, an elder in my village told me he didn’t know why he should attend. When I told him that his wisdom and knowledge are needed, he did attend the meeting and participated in the discussions. The personal visits and invitations are time-consuming but worth the effort. In the village, a personal visit usually takes an hour or more. It takes extra time for the change-agents to create change in the system, but personally inviting community members or key players to the meeting often results in their attendance. This applies most especially to the elders and volunteers in the community. Open community meetings are important for the community, because people need to feel they are part of the planning, even if after several meetings the planners begin to emerge.

Hold several meetings. In order to separate the walkers from the talkers, it has been my experience that a community must hold several meetings before the walkers in the community

begin to emerge. The talkers often have great ideas and suggestions, but they may have other responsibilities or are simply not interested in the design part of the work. In my village, the decisions are discussed in the steam-bath, at card games, elder's luncheons, church, and among close friends and family members. Decisions are made slowly and deliberately. Outsiders often think that community members are disinterested when their questions at open meetings are met with silence. That is not the case. Usually, it takes time to discuss among one another to get consensus for change to happen. However, there are other challenges to consider when creating change in a small community. One of them is the power-play among members. These are the invisible forces of influence unknown to an outsider, but very known within the community. There are times when an outsider is the best facilitator for an open discussion especially following a crisis.

Outsiders as facilitators of a community meeting. An outsider can be an invited facilitator with mediation skills, with no family ties to the community. Having no ties to the community may make a big difference in creating effective community dialogues. For some time, the White River First Nation Canada hired an outside facilitator to run their annual meetings after a lot of time wasted in hurtful dialogue. The facilitator's job is to create a safe environment for constructive dialogue. The facilitator should have knowledge or experience working in a community meeting. In addition to holding community meetings, the facilitator should pay visits to the local tribal council office and tribal organizations to listen to the leaders. Often community members may feel uncomfortable or unsafe speaking. Important for a facilitator is to know that members of a small community usually will not contradict one another in a meeting. Native people avoid conflict at every level. The role of the "outsider" mediator/facilitator serves to keep the conversation going and to break up the community

communication barriers. As a member of a rural community, I am aware of the challenges that outsiders face when bumping into invisible walls of communication that lie within every small community. The following are a few forms of communication barriers, and how to overcome those barriers.

Clan influence. Some clans have more members than others and often hold the political power within the community. They are the ones voted for political office, and as a result, that clan holds the power in the community. They may or may not represent the voice of the smaller, less powerful and influential clans. The political officers may not be the best leaders. Furthermore, there are the family conflicts that may have started decades and even generations earlier.

2. Define the Conflicts in Your Community.

“The suicides. [They were] tough. This is how [the meetings] started. Everything was done in the community when something happened bad” (Aceveda, personal interview, 2014).

Conflict in the community is not uncommon. In fact, it is normal and should not be avoided. No two people will agree on everything. But when the conflict creates harm and danger to a community, it often indicates a need to change the way things are going. However, change, even good change, is not easy. There might be the attitude of “this is the way we do things around here” (Costantino & Merchant 1996, p 7). Most of the time, it takes a crisis to create a willingness to change or alter the way things are done. Many rural communities are experiencing the crisis of drug importation to their communities. Some communities experience violence resulting in deaths. Other communities have high rates of suicide and underage drinking such as Kake did in their community.

According to the “A People in Peril” (1988) the residents of Kake chose to stay out of other people’s alcohol problems. The ones who did not drink stayed to themselves. However, the

concerned members began to meet to discuss what to do when the rising number of suicides paralyzed the small community. They sought outside help from consultants who traveled to their community to offer advice and comfort, but when they left, the people remained with the problems. The Kake community members could not ignore the problems within their community, nor the high rates of young people drinking alcohol. When their social problems got national media attention, they took action. They began to meet as a community and talk among themselves to face their problems. Often the problems are just symptoms of a deeper issue. That was when they decided that only they, as community members, could resolve the deeper issues.

Often, in small communities, community members are affected by social maladies but many choose to either complain to one another or ignore the problems altogether. As mentioned before, Native people avoid conflict. When teens go on a drinking spree, it creates fear and concern among the members, but sometimes little is done to resolve the problem. Every community differs in how and when they respond to conflict. One example is how my community of Northway responded when drug dealers started coming to the village. The village formed a group that intervened when the drug dealers arrived. The village is located on the highway. They used Facebook to get the word out that their community had a “No Tolerance” zone for drugs. Elsewhere, in some fly-in villages, community members meet the drug sellers at the plane and send them back before they enter the village. Other communities have banished the troublesome tribal members.

3. Envision a Safer and Healthier Community.

Every community has strengths and assets. My home village is the home of many traditional songs. One of our Elders, Stephen Northway, was a song-maker. His songs are heard in many parts of interior Alaska. We are on the road system, which makes easy access to nearby

hub of Tok and the town of Fairbanks. We have a lot of good caring people in our community and our elders are active members of the community. My second home of Tanana is located along the Yukon River. They have a strong song group of young people. They love to celebrate and hold many community functions and dances. They are supportive of one another. They have their own school district thus allowing for more community control.

4. Peacemaking is a Way of Life.

“This is Peacemaking” (Yazzie, R. personal communication, 5/2017.)

Navajo Peacemaker Robert Yazzie refers to Peacemaking as a way of life. In Navajo country, the Peacemaking courts are based on Hoozoh – a guide to values, principles and practices in their country. It took several visits to Kake to fully understand Peacemaking as a way of life. This moment of clarity occurred while sitting outside on a sunny spring day, leaning up against an overturned boat in the yard of one of the Peacemakers. He explained why former “wrongdoers” were the most willing participants in the Peacemaking circle process. It was their way of giving back the support and guidance given them when they were in need by the Peacemakers outside the circle. The former wrongdoers were the ones who needed guidance, support and assistance at one time in their lives and the Kake Peacemakers, acting as volunteers, were there to help.

An example of Peacemaking in Kake occurred in 1999 with a mother who was sent from the village to an alcohol treatment program. The Peacemakers made sure her home, children, and bills were covered and cared for in her absence. Upon her return, the mother remained sober. Peacemaking, when practiced is a way of life in and out of the circle process, is sustainable. The strength, wisdom, and compassion found in Peacemaking do not depend on the politics and/or funding. When critics ask why the circles are no longer practiced, the answer is that they are practiced as long as there are referrals. There are times when the Peacemakers meet

with family members who have come for assistance. They have helped with troubled marriages and stand ready when others come for guidance and assistance. One of the greatest values is that of helping others in needs. Peacemaking as a way of life is alive and well in Kake.

The Circle process in Kake is a safe place for people to share their stories and struggles. Though they never referred to themselves as Peacemakers, the participants who volunteered to sit in the circles in order to guide others are the ones who keep the circle alive and sustainable. The most important quality a Peacemaker should have is an open mind. They must not be judgmental but show kindness and understanding. Equally as important is the need to remain confidential. What is shared in the circle remains in the circle. This rule is so important in a small community. Jackson said a Peacemaker should not be carrying any dysfunction within them because they will be working with people (Jackson, Private Discussion).

5. Prepare for Resistance and Constraints in Local Design.

“People will resist all change, even good change” (Costantino & Sickles-Merchant, 1996). Designers should anticipate resistance in the design of a circle process because even helpful change creates a loss of the familiar. The Kake designers faced resistance from local leadership and churches. What they did was invite them to the circle. Peacemaking isn’t about the quest for power, but the move to create balance and safety in the community by seeing to the needs of the victims and creating climate of safe exchange between wrongdoers and victims.

6. Create Capacity for Peacemaking.

Kake stands out from other dispute resolution processes in rural Alaska because it is a community-based design, based on their local values and practices. Traditional values and teachings are important in the circle process, because they strengthen and maintain Tlingit identity. Elders are important in design, because they bring their wisdom and experience. Before

the members began to hold the circle, their village council invited Peacemakers from Canada to hold a weeklong training in Kake. The community held their first circle after the training. The trainings offer confidence to a process that is already known. At a recent Peacemaking training held in Anchorage, Peacemaking practitioner and designer Harold Gatensby told the attendees that they had everything they needed for Peacemaking from their elder's teaching of ancient law. When one Indigenous Peacemaker practitioner talks to another Indigenous person, there is a strength and courage that is passed from one to the other.

7. Place-based Leadership in Peacemaking Design.

“We lived here all our life. I was born here and raised here” (Mike Jackson, Keeper-of-the-Circle in Kake, personal conversation).

Leadership in creating a Peacemaking process is vital to the design. Peacemaking leadership looks out for clan, family, community and the future for their youth. In Kake, leadership in the circle is the elders and former-wrongdoers. The elders are the strength and wisdom-keepers of the community. Kake is fortunate to have many elders in their community. They teach by storytelling. One elder I interviewed told me his story of his journey back to sobriety and well-being. He had lost a daughter to suicide and was committed to being part of the circle process to be of support to others. The former wrongdoers offer “strong medicine” to the group because they support the process and Peacemakers who assisted them in their times of hardship.

The type of leadership that is so important to the design is the change-agents' creating the Peacemaking process. Some are Peacemakers with vision and perseverance. For example, Mike Jackson was both the State Magistrate and Keeper-of-the-Circle (facilitator). He took his Magistrate hat off as he said when he stepped inside the circle and became equal to the others. He is a quiet, diplomatic and kind man. Other change-agents, like Harold Gatensby, mince no words in speaking his truth to others. He makes audiences wince with his message. He also

empowers the Native audience by saying what they cannot say. Both were instrumental in the design of Peacemaking in their communities. Harold traveled to several countries bringing the message of Peacemaking to their communities. He holds a summer camp to teach Peacemaking. Both are visionaries along with other Peacemakers in their communities.

All the Peacemakers interviewed were long-time residents of Kake and Yukon, Canada. Most of the supporters of Peacemaking circles were recent residents of Kake who were hired to work there. Longtime Peacemakers carry the law of the land as codes for living. They grew up with the laws that have become part of their lives. The Tlingit traditional values and teachings are important to the Peacemakers, because it strengthens and maintains Tlingit identity and spirit. Respect for self, others and the land are spiritual core values that are carried by the leaders. Several Peacemakers left home for school or by choice, but they returned to Kake. This is not to say that all Peacemakers must grow up in their community, but they must have spent time to know the history of the people. "Cultural knowledge is an understanding of what it means to be a member of a particular tribal nation; this includes particular traditions, issues, and ways of being and knowing that make an individual a member of a community" (McKinley & Brayboy, 2006, p. 434).

Though it is not often taught in our education system, Native people of Alaska have a history unlike that of the Anglo-American settlers. The Native history often recognizes values opposite those of the settlers who moved to Alaska. Through their newly formed territorial government and federal government the settlers took the land and, in some cases, moved the Native people off their traditional land. On this note, it can get confusing to Native people who are educated in an Anglo-American system and who do not know their history. Native people must make it their business to learn their history, because they will likely not learn it in the

education system. We are resilient people who have survived the epidemics, boarding schools, and colonization. A Native person educated in his or her history understands and recognizes when the Anglo-American view of history is imposed upon them.

There are studies indicating intergenerational trauma, the transmission of historical oppression and its negative consequences on Indigenous peoples. There is evidence of the impact of trauma on the health, wellbeing, and social disparities facing First Nations peoples in Canada and other Indigenous peoples around the globe, including Alaska. Today, Native people of Alaska are emerging from the dark tunnel of oppression. Sometimes it takes personal effort to learn the painful truth about our history and that of Indigenous people all over the world, who share similar fates.

8. Create close relationships with judges, lawyers, social workers, probation officers.

Native people are not trusting of a system that has for so long oppressed them and taken away their authority to govern within their own community. Creating and maintaining relationships with outsiders can be challenging. However, it is important for local Peacemakers to invite judges, lawyers, social workers, probation officers to their community events is one step towards creating working relationships.

Revisiting the Efforts of the Upper Tanana Wellness Committee in Tok, Alaska

My experience as member of the Upper Tanana Wellness Committee started my research journey towards Circle Peacemaking design in Kake because of my own experiences as a co-designer. We only had one case: a non-Native young person who lived in a Native village was charged with underage drinking. The presiding magistrate, also a member of our committee, diverted the case to us. That circle experience alone led me to believe that community members can be active in helping and supporting youth in their communities as we did with this young

person. The members invited to the circle showed up early, gave their undivided attention to the wrongdoer and shared from their hearts. Food was offered before and after the circle process. Though we lived in the same community, many of us in the circle really did not know one another personally. In the circle, we shared our lives that included our mistakes we made along our journey in life. The woman sitting next to me was a political rival at the local meetings. We sat aside our differences to focus on the well-being of a young person in our community. The circle process took about an hour or longer. The circle began with prayer from the local minister who was also invited to the circle. At first, the young offender sat with arms crossed but relaxed and became more willing to listen as the circle continued. The young person reoffended not too long afterwards, but with the support of the circle was able to graduate from high school. Though this young person left the community, I often wonder if there is memory of love and support shown during a troubled time. One cannot measure the community cohesiveness that happened that day, and the care and support shared in the circle.

Though our efforts did follow several of the steps defined to design a Peacemaking Circle in a village community, our committee ran into problems were not resolvable, resulting loss of funds and fading out of our efforts. As a former committee member, I was honored to be part of this committee. After my study in Kake, I reflect back to what we could have done differently to make our efforts a reality in the Upper Tanana region of Alaska. Here are a few things I felt worked for us as part of Indigenous Dispute System Design:

1. Hold Community Meetings. The committee met in the Tok courtroom once a month during the lunch hour for approximately three years. This was an open meeting. We sent out and posted notices. Most meetings were discussion meetings among members. It was an opportunity

for people to give updates on the communities. I shared about my village of Northway. On occasion a Native council member showed up, but mostly out of curiosity.

2. Define the Conflicts in the Community. At the time that I joined the discussion, we were concerned about underage drinking in a nearby village, not in our community of Tok. We had other communities' interests in mind as well. A member from the school district had concerns about behavior in the classroom. The juvenile system was impersonal and far away from a young offender. At that time, if a youth was charged with underage drinking, the parents had the option to pay the fines. Otherwise, a probation officer, who lived 250 miles away, was assigned to the case. This caseworker would follow up by phone calls. Like Kake, we were challenged by both a growing rate of underage drinking and an impersonal juvenile system.

3. Envision a Safer and Healthier Community. We spent the first portion of our monthly meeting talking about our vision for the youth in Tok and surrounding Native villages. We wanted safer communities and effective approaches in working with young wrongdoers. Most of the committee members lived in Tok. A few, including myself, were from nearby villages though we lived in Tok at that time.

4. Peacemaking as a way of life. At that time, our committee never mentioned Peacemaking as a way of life. Tok was not home for many of us. We brought our values and practices to the table as working professionals. One of Peacemaking's values is to maintain good relationships among one another. Many of the professionals knew of the Native youth in the communities, but they did not have close relationships with them as an auntie, uncle, grandmother or clan member. In Kake, the Peacemakers knew the wrongdoers and the victims. Often, they were related to them. Our committee may have only known the wrongdoers by name once it appeared in the court dockets. Peacemakers have qualities such as kindness, non-

judgment, and an open mind, to name a few. In Kake, the Peacemakers carried the values and traditions and law of the land in their hearts and practiced them in their daily lives. In Tok, we were from professional fields and though we carried the qualities of the Peacemakers, we did not know the young people, a quality incredibly vital to creating transformation for both wrongdoers and victims.

The funding we received created confusion and mixed messages regarding our vision and mission. What we should have done with the funding was to create capacity in the communities for more awareness about Peacemaking and/or restorative justice (RJ) and serve as allies and supporters of community-based initiatives if they chose to go forward as designers. The Native communities have the Peacemakers, values, Indigenous knowledge and practices needed to create Peacemaking if they choose to create this community-based initiative. Leadership is important in this effort, requiring place-based leadership with vision and perseverance and community respect. The communities have what the court cannot supply – eyes and ears to watch their youth. They are empowered to create a climate of care for their youth by spending more time with them and committing to more community activities.

5. Prepare for Resistance and Constraints. In 2010, there was little understanding of the RJ process in the Upper Tanana region of Alaska, and that is still the case today. In order to introduce RJ to the communities, the former magistrate and I traveled to three of the villages: Tetlin, Northway and Tanacross and visited with the regional school board in Tok. While one of the villages embraced the concept, and wanted more information, two of the villages were hesitant. When I asked if RJ was a better course to take than the court, one community member said he preferred to go the court route. In another village, a community member suggested sending young wrongdoers to their tribal court instead of going the RJ route. “We can take care

of our youth,” she said. The regional school board members did not have any questions and appeared disinterested.

6. Create Capacity for Peacemaking. Our committee adopted the Restorative Justice (RJ) process as a process to work with young offenders. We used funding to send a committee member to the RJ facilitator trainings at both the University of Alaska Fairbanks and in Whitehorse, Yukon Canada. I attended both trainings and became the Restorative Justice practitioner for the process. We sponsored a Restorative Justice training in cooperation with the University of Alaska Fairbanks Justice Department. Dr. Brian Jarrett and I posted flyers and invited people from the surrounding villages, though we did not pay for participants’ hotel and gas. We did not get more than 10 participants. The Upper Tanana Wellness Committee’s RJ initiative may have succeeded if we used the funding to create capacity by offering trainings in the villages instead of asking for participation in Tok.

7. Identity Place-Based Leadership in Peacemaking Design. We did not know about Peacemaking and did not identify place-based leadership as a priority. Place-based leaders live in their communities mostly by birth but often by choice. Most of us were professionals who had just recently moved to Tok. Several of us did not plan to live long-term in Tok. I moved there for a job opportunity and moved back home after that job ended. Our leadership came from a professional background. Among our committee were the judge, courtroom clerk, chief of police, employees from the local school district, Head Start workers, mental health clinicians, and members of a clinic that provided services to the Natives in the region. I was there as a volunteer public relations effort for my job. Place-based leadership in Peacemaking is mostly volunteer. The Northway Peacemaking circle was all volunteer-based. The only funding should be for the

facilitator and recorder by only by agreement. The Upper Tanana Wellness Court should have recognized place-based Peacemaking leadership and used the funding for facilitator's training.

8. Create close relationships with judges, lawyers, social workers, and juvenile probation officers. We were a committee that included the local magistrate/judge, who supported our efforts. We met in the courtroom once a month. However, we did not know the other important participants in the courtroom, because they did not live in Tok. These were the attorneys, social workers, juvenile probation officers, etc. We did not know the district attorney, who was not familiar with the Restorative Justice process. We were concerned professionals who met once a month for discussion. The planning stage was initiated by a few of us, but implementing the process took time and effort outside the monthly meetings.

If we were given the opportunity to turn around and re-do our efforts as the Upper Tanana Wellness Committee, I would still support the Restorative Justice efforts we advocated. We held a Circle in Northway with good outcomes for the young offender. However, our efforts may have had better outcomes if we chose to build a problem-solving court for the young offenders built upon the foundation of Therapeutic Jurisprudence practices. Tok had the capacity to go this route. A Wellness Court would follow the Problem-Solving court model by establishing a team of professionals to work with the young offender. The Tok State Court would offer both a Restorative Justice Circle or a Wellness Court as options for the wrong-doers. However, I would encourage the tribes to create dispute resolution systems such as a Peacemaking Circle for their communities because they know their offenders and can serve as support systems for them.

Recommendations

The State of Alaska Rules of Court gives the court opportunity to refer cases to community-based initiatives. However, most of their attention is focused on diverting cases to the tribal courts already saddled with a burdened workload and lack of time. On this note, the State should be giving more attention to delivery of services to the place-based community initiatives. The argument may be, and rightly so, that there are few place-based initiatives such as Circle Peacemaking operating at the local community level. There are three approaches to shift attention to place-based community driven initiatives (Gilbert, 2012). The first approach is to begin a listening project with the communities by initiating community meetings. Listening to communities rather than deciding what is best for them is long overdue in Alaska. The second approach is to create relationships with the community leaders and members by attending community events and tribal council meetings. This has proven to be a very effective approach from my own experience living in the village. The state troopers stationed in Northway have either good or bad relationships with the community members. The troopers with good relationships attend the community events with their families. They treat people with respect while doing their duties. The final approach is to remain flexible. Not all services should be locked in stone and should work with the communities. “The government agencies can also adjust their own practices” (May, 2015, p. 5). The government designers should take a humble and unassuming back row to the community and take the position of being a supporter and ally. This isn’t always the case in the interior region of Alaska, where most training is delivered to the villages from a Fairbanks-based non-profit that receives government funding. The funding should be in the hands of the individual tribal governments to decide for themselves what form of training and trainer they choose. It is really time for non-profit agencies and state and federal

government to take a back seat and allow for Native people to reclaim the governance and self-determination that was taken from them.

Conclusion

After decades of control, the Alaska State court and legislature recently created space for Native people in rural Alaska to design their own dispute resolution initiatives, but how much local control will they allow for this to occur remains to be seen. Outsiders must serve as allies to the process, and not as the designers. Restorative practices, no matter what they are, must emerge from local cultural and historical practices to be effective when working with wrongdoers, victims, and local family and school-age youth problems. Peacemaking practice based on ancient values wisdom is the foundation for sustainable Peacemaking in Kake, and it can be a sustainable process for other Native communities in rural Alaska. The main reason for the effectiveness of a locally designed Peacemaking practice is that community members know one another and look out for one another. What better approach to community wellness, than for the community members to own the efforts and outcomes?

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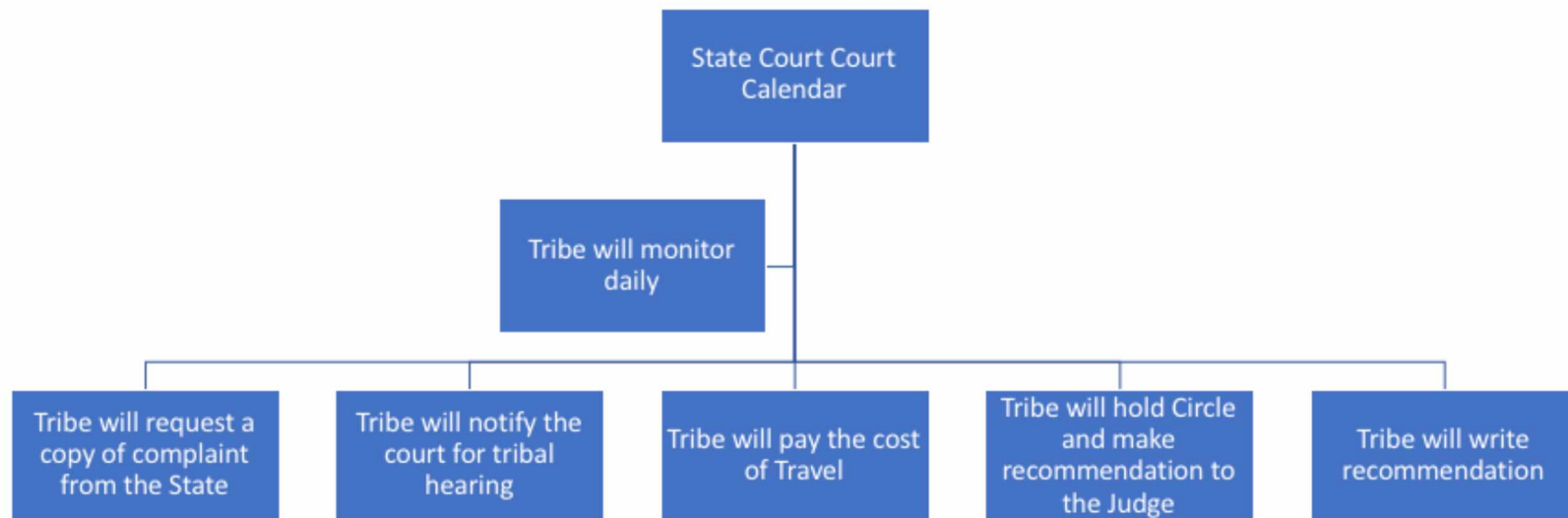
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Appendix A



Rule 11 Flow Chart for Tribes

Appendix B

PLAN ADOPTED BY THE [TRIBE] AND THE ALASKA COURT SYSTEM FOR RESTORATIVE JUSTICE REFERRALS UNDER CRIMINAL RULE II(i)

This PLAN adopted by [TRIBE] and the Alaska Court System sets out the procedures for the referral of matters relating to criminal cases involving Tribal members and descendants of members.

PARTIES: This PLAN is made and entered into by the [Tribe] and the Alaska Court System on behalf of the [court location] Trial Courts (“[] Court” or “Court”).

PURPOSE: The purpose of this PLAN is to involve the Tribe and traditional restorative justice approaches in Alaska Court System cases involving tribal members, recognizing that outcomes in these cases improve when the delivery of justice involves collaborative and community-based programs.

The Court’s efforts to impose meaningful and relevant consequences for the [defendant or juvenile], the community, and the victim will be aided by tribal restorative justice program sentencing recommendations that reflect the community’s assessment of the impacts of the criminal behavior and that integrate local wisdom and cultural norms.

BOTH PARTIES AGREE TO THE FOLLOWING PROCEDURES:

1. The Tribe will monitor the daily Court calendar for Tribal members or member descendants. The Tribe will submit a request for a copy of the [specify documents, eg complaint, indictment] from the case file, which the Court will provide to the Tribe within [] days of receipt of the request. The Court will not charge the Tribe for these documents.
2. Within [] days after receiving the documents, the Tribe will notify the Court whether it wishes to conduct a [specify tribal sentencing proceeding, e.g., circle sentencing] as to that defendant.
3. If the Tribe notifies the Court that it wishes to conduct the [proceeding] as to that defendant, the Court will notify the parties of this request. If the defendant subsequently is convicted of the crime, the Court will, within [] days of the conviction, notify the Tribe of the date that the defendant will be sentenced and whether the prosecution, defense and victim (if any) have consented to a referral. Provided that the necessary consents have been obtained, the Court will also formally refer the case to the Tribe at that time to conduct a [proceeding]. The notice and referral, if any, will identify the charge of which the defendant was convicted, any mandatory sentencing requirements (such as the presumptive or minimum term that the defendant must serve in jail), and any agreement the defendant and the state made regarding the conviction. When a case has been referred to the Tribe under these procedures, the Court will set sentencing for a date at least [] days after the date of conviction.
4. After a case is referred to the Tribe, the Tribe will take the necessary steps to convene and conduct the [proceeding] [include any specific steps as necessary, such as meeting with the defendant following the Court proceeding to answer questions and schedule an initial intake, conducting the initial intake and assessment, determining the participants in each sentencing

- circle, and making arrangements for the proceeding based on its assessment.] The Tribe will promptly notify the Court if it needs the Court to change the sentencing date.
5. The Tribe will complete the proceeding no later than [] days prior to the Court sentencing date. The Tribe will inform the Court, district attorney, the defendant, and the defendant's lawyer, if any, of the proceeding date at least [] days prior to that date.
 6. Through this community-based process, the [proceeding] will identify proposed terms of the defendant's sentence, which may require culturally relevant activities, a drug and alcohol assessment and treatment, restitution (such as money or services for the victim), or other steps.
 7. At the end of the [proceeding], the Tribe will prepare a written report, which will state each component of the recommended sentence and timeframe for completion of each component. This report shall be provided to the Court, the defendant, the defendant's attorney and the district attorney at least [] days before the date of the sentencing.
 8. The Court will carefully and respectfully consider the recommendation of the [proceeding]. The parties understand, however, that the Court is not bound by that recommendation.
 9. The parties agree to meet from time to time to review the implementation of this PLAN and to make any revisions they find to be appropriate.
 10. Nothing in this PLAN prevents the Tribe from conducting a [proceeding] after notification of defendant's conviction and providing a sentencing recommendation to the Court, even if a formal referral has not been made.

SIGNED THIS DAY OF [MONTH], 20__.

Christine Johnson
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

[Tribal Official's Name]
[Title]
[Tribe]
[Address]
[Location], Alaska 99574

Acknowledged by:

[Judge/Magistrate Judge's Name]

[Judge/Magistrate Judge]

Alaska Court System

[Address]

[Address]

[Location], Alaska 99574

Appendix C

Kake Circle Peacemaking Flow Chart Different Routes to Circle Peacemaking (CP) but not limited to:

